

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 606

LOUIS BUCHALTER, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK

No. 610

EMANUEL WEISS, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

No. 619

LOUIS CAPONE, PETITIONER,

vs.

PEOPLE OF THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF KINGS COUNTY, STATE OF
NEW YORK

PETITIONS FOR CERTIORARI FILED { **DECEMBER 30, 1942.**
JANUARY 2, 1943.
JANUARY 4, 1943.

CERTIORARI GRANTED MARCH 15, 1943.

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Court of Appeals

OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent.

against

2

LOUIS BUCHALTER, alias "Lepke", EMANUEL
WEISS, alias "Mendy Weiss" and LOUIS CAPONE,
Defendants-Appellants.

Statement Under Rule 234

These are appeals from judgments of the County Court of Kings County, dated December 2nd, 1941, convicting the appellants Louis Buchalter, Emanuel Weiss and Louis Capone of the crime of murder in the first degree and sentencing them to be put to death.

3

The trial took place before Honorable Franklin Taylor, County Judge of Kings County, and a jury beginning on October 20th, 1941, and concluding on November 30th, 1941. Honorable William O'Dwyer, District Attorney of Kings County, by Burton B. Turkus and Solomon A. Klein, Esqs., Assistant District Attorneys, of counsel, appeared for the People on the trial.

4

Statement Under Rule 234

The appellant Buchalter was represented by Wegman & Climenko and Hyman Barshay, Esqs.; the appellant Weiss by Alfred J. Talley, James L. Cuff and M. M. Kreindler, Esqs.; and the appellant Capone by Leon Fischbein, Emanuel Rosenberg and Sydney Rosenthal, Esqs. There has been no change of attorneys.

5

6

Notice of Appeal of Defendant
Louis Buchalter

COUNTY COURT

COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
against

LOUIS BUCHALTER, alias "Lepke", EMANUEL
WEISS, alias "Mendy Weiss" and LOUIS CAPONE,
et al.,

Appellants.

SIRS:

PLEASE TAKE NOTICE, that the defendant, Louis Buchalter, hereby appeals to the Court of Appeals, State of New York, from the judgment of conviction of the crime of murder in the first degree and the sentence of death thereon, rendered against him on the 2nd day of December, 1941, and entered in the Office of the Clerk of that Court on that day, and from each and every part thereof, including orders denying the defendant's motion for a new trial, and the said defendant hereby appeals from each and every part of the said judgment and sentence, as well as from the whole thereof, and

10 *Notice of Appeal of Defendant Louis Buchalter*

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the orders heretofore made and entered on the 16th day of July, 1941, and on the 22nd day of September, 1941, denying motions theretofore made on behalf of the said defendant for an order to transfer the trial of this action from the County Court of Kings County, to the Supreme Court of the State of New York in any county other than those embraced within the City of New York, and

11

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the order or other ruling of the Hon. Franklin Taylor, a Judge of the County Court of Kings County, on August 5, 1941, pursuant to which ruling or order the trial of this action was directed to proceed, beginning on the 15th day of September, 1941, and

12

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the several rulings made by the said Hon. Franklin Taylor with respect to the fitness and capacity to serve

Notice of Appeal of Defendant Louis Buchalter 13

of those several talesmen sworn on voir dire examination.

Dated: New York, N. Y. December 24, 1941.

Yours, etc.,

WEGMAN & CIUMENKO and

HYMAN BARSHAY,

Attorneys for defendant,

Louis Buchalter,

Office & P. O. Address,

60 Wall Street,

New York City.

14

To:

Hon. WILLIAM O'DWYER,

District Attorney, Kings County

Hon. FRANCIS SINNOTT

Clerk of the County Court of Kings County

County Clerk of Kings County

15

16

**Amended Notice of Appeal of Defendant
Louis Buchalter**

COUNTY COURT

COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
against

17

LOUIS BUCHALTER, alias "Lepke", EMANUEL
WEISS, alias "Mendy Weiss," LOUIS CAPONE,
et al.,

Appellants.

SIRS:

18

PLEASE TAKE NOTICE, that the defendant, Louis Buchalter, hereby appeals to the Court of Appeals, State of New York, from the judgment of conviction of the crime of murder in the first degree and the sentence of death thereon, rendered against him on the 2nd day of December, 1941, and entered in the Office of the Clerk of that Court on that day, and from each and every part thereof, including orders denying the defendant's motion for a new trial, and the said defendant hereby appeals from each and every part of the said judgment and sentence, as well as from the whole thereof, and

*Amended Notice of Appeal of Defendant
Louis Buchalter*

19

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the orders heretofore made and entered on the 16th day of July, 1941, and on the 8th day of September, 1941, denying motions theretofore made on behalf of the said defendant for an order to transfer the trial of this action from the County Court of Kings County, to the Supreme Court of the State of New York in any county other than those embraced within the City of New York, and

20

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the order or other ruling of the Hon. Franklin Taylor, a Judge of the County Court of Kings County, on August 5, 1941, pursuant to which ruling or order the trial of this action was directed to proceed, beginning on the 15th day of September, 1941, and

PLEASE TAKE FURTHER NOTICE, that the defendant, Louis Buchalter, appeals from the several rulings made by the said Hon. Franklin Taylor with respect to the fitness and capacity to serve

21

22 *Amended Notice of Appeal of Defendant
Louis Buchalter*

of those several talesmen sworn on voir dire examination.

Dated: New York, N. Y. January 9, 1942.

Yours, etc.,

23 WEGMAN & CLIMENKO, &
HYMAN BARSHAY,
Attorneys for appellant,
Louis Buchalter,
Office & P. O. Address,
60 Wall Street,
New York City.

To:

Hon. WILLIAM O'DWYER,
District Attorney, Kings County

Hon. FRANCIS SINNOTT
Clerk of the County Court of Kings County
County Clerk of Kings County

24

**Notice of Appeal of Defendant
Emanuel Weiss**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,

against

26

EMANUEL WEISS,
Defendant.

SIR:

PLEASE TAKE NOTICE that the defendant, Emanuel Weiss, above named, hereby appeals to the Court of Appeals of the State of New York, from a judgment of conviction of the crime of murder in the first degree rendered against him in this Court on November 30th, 1941 and from the sentence thereafter imposed on the 2nd day of December, 1941, and from an order made and entered herein on the 2nd day of December, 1941 denying defendant's motion to set aside the verdict and for a new trial, and that the defendant appeals from said judgment of conviction and

27

28 *Notice of Appeal of Defendant Emanuel Weiss*
from said order and from each and every part thereof.

Dated, Brooklyn, N. Y., December 11, 1941.

Yours, etc.,

ALFRED J. TALLEY
40 Wall Street
New York City

29 **JAMES I. CUFF**
99 John Street
New York City

M. M. KREINDLER
51 Chambers Street
New York City
Attorneys for Defendant

To:

30 **Hon. WILLIAM O'DWYER**
District Attorney Kings County

Hon. FRANCIS J. SINNOTT
County Clerk of Kings County

**Notice of Appeal of Defendant
Louis Capone**

31

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs,
against

32

LOUIS BUCHALTER, alias "Lepke",
EMANUEL WEISS, alias "Mendy Weiss",
HARRY STRAUSS, alias "Pittsburgh Phil",
JAMES FERACO,
PHILIP COHEN, alias "Little Farvel",
LOUIS CAPONE,

Defendants.

Indictment No. 23855

33

SIR:

PLEASE TAKE NOTICE that the defendant, Louis Capone, hereby appeals to the Court of Appeals from a judgment of conviction of the crime of Murder in the First Degree rendered against him in this Court on the 2nd day of December, 1941, and from the sentence imposed upon him thereunder, and the defendant, Louis Capone, appeals from each and every part of said judgment of conviction and sentence; and

34

Notice of Appeal of Defendant Louis Capone

35

PLEASE TAKE FURTHER NOTICE that the defendant, Louis Capone, further appeals from the order of Judge Peter J. Brancato of the County Court of this county made and entered the 23rd day of June, 1941, denying the defendant's motion for a severance of the indictment and for a separate trial; and from the order of Mr. Justice Peter M. Daly of the Supreme Court of the County of Kings made and entered on the 1st day of August, 1941, denying the defendant, Louis Capone's motion to transfer and remove the trial of the within indictment from the County Court of Kings County to a term of said Court in another county within the State of New York; and from each and every intermediate order made herein and from the whole and each and every part of said orders.

Dated, Brooklyn, New York, December 27th, 1941.

Yours, etc.,

36

LEON FISCHBEIN,
66 Court Street,
Brooklyn, New York.

EMANUEL ROSENBERG,
66 Court Street,
Brooklyn, New York.

SYDNEY ROSENTHAL,
10 Court Square,
Long Island City.

Notice of Appeal of Defendant Louis Capone

37

To:

FRANCIS J. SINNOTT,
County Clerk, Kings County.

WILLIAM O'DWYER, Esq.,
District Attorney, Kings County.

The Warden and Agent of Sing Sing Prison,
Ossining, New York.

38

39

40

**Minutes of Presentment against Defendants
Buchalter, Weiss and Capone**

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 28th day
of May 1940.

Present: Hon FRANKLIN TAYLOR County Judge.

41

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER, alias (Lepke)
EMANUEL WEISS, alias (Mendy Weiss)
LOUIS CAPONE Impleaded

#23855

42

Proclamation made and Court opened.

The Grand Jury comes into Court and presents
Indictment against the following named defend-
ants, for the crimes set opposite their names re-
spectively:

Minutes of Presentment against Defendants **43**
Buchalter, Weiss and Capone

23855 Louis Buchalter, Jointly indicted for
 alias (Lepke) Murder in the First
 Emanuel Weiss, alias Degree.
 (Mendy Weiss)
 Louis Capone Im-
 pleaded

A true extract from the minutes.

FRANCIS J. SINNOTT **44**
 Clerk

46

**Minutes of Arraignment of Defendant
Louis Buchalter**

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 29th day
of May 1941.

Present: Hon. GEORGE W. MARTIN County Judge.

47

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER Alias, "Lepke"

#23855

48

Proclamation made and Court opened.

The following named defendant personally appeared and was advised as to his rights pursuant to Section 308 of the C.C.P.; and was then arraigned to plead to Indictment found against him respectively:

*Minutes of Arraignment of Defendant
Louis Buchalter*

49

23855 Louis Buchalter, Indicted for Murder in
alias "Lepke" the First Degree.

Defendant stands mute,
plea of Not Guilty,
Ordered by the Court
to be entered. Bail
denied—Trial set for
July 14, 1941, U. S.
Marshal, in whose
custody defendant is,
directed to produce
defendant on that
day.

50

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk

51

52

Minutes of Arraignment of Defendant Emanuel Weiss

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 11th day
of April 1941.

Present: Hon. FRANKLIN TAYLOR County Judge.

53

THE PEOPLE OF THE STATE OF NEW YORK

against

EMANUEL WEISS, alias
"Mendy Weiss"

#23855

54

Proclamation made and Court opened.

The following named defendant personally appeared and was advised as to his rights pursuant to Section 308 C. C. P.; and was then arraigned to plead to indictment found against him respectively:—

*Minutes of Arraignment of Defendaat
Emanuel Weiss*

55

#23855

Emanuel Weiss, alias
"Meady Weiss"

Indicted for Murder—

1st Degree.

Pleads—Not guilty.

No Bail—Remanded.

M. M. Kriendler, Esq.

Atty. for Deft.

A true extract from } the minutes.

FRANCIS J. SINNOTT
Clerk

56

57

58

Minutes of Arraignment of Defendant Louis Capone

At a term of the County Court, held
in and for the County of Kings
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 28th day
of May 1946.

Present: Hon. FRANKLIN TAYLOR County Judge

59

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS CAPONE
Impld.

#23855

60

Proclamation made and Court opened.

The following named defendant personally ap-
peared and was arraigned to plead to indict-
ments found against him respectively:

#23855

Louis Capone
Impld.

Indicted for Murder-
1st Degree.

Pleas--Not guilty
Bail denied--Re-
manded

A true extract from the minutes.

FRANCIS J. SINNOTT

**Indictment against Defendants Buchalter,
Weiss and Capone**

61

COUNTY COURT

OF THE COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiffs

against

62

LOUIS BUCHALTER, alias "Lepke"

EMANUEL WEISS, alias "Mendy Weiss"

LOUIS CAPONE,

Defendants

The Grand Jury of the County of Kings, by this indictment, accuse the defendants of the crime of Murder in the First Degree, committed as follows:

The defendants on or about September 13, 1936, in the County of Kings, wilfully, feloniously and of malice aforethought shot and killed Joseph Rosen, with revolvers.

63

WILLIAM O'DWYER
District Attorney

64

(Endorsements on Indictment)

Strauss & Capone, Both

Pleads Not Guilty May 28, 1940

Judge Both bail denied—Matter of A.D.A. discretion—See Sec. 553 CCP

Both remanded

Strauss to County Jail, Kings Co. and Capone to Bronx Co. Jail

Taylor, J.

Cohen pleads "Not Guilty"—Bail denied, as a matter of Discretion.

65

Remanded. Dec. 2, 1940

Taylor, J.

Louis Buchalter, personally appears for arraignment.

Defendant stands mute.

Plea of "Not Guilty" ordered by Court to be entered—bail denied—trial set for July 14, 1941

U. S. Marshal, in whose custody defendant, is, directed to produce defendant on July 14, 1941—Martin, J.

May 29, 1941—Burton Turkus, A.D.A.

66

12/2/40 Cohen—Defendant personally appears and advised by the Court of his rights pursuant to Sec. 308 C.C.P.—

Have you a lawyer? No, but will retain own counsel.

Weiss (See over)

5/28/40

Moe Levy Esq., Assigned to Strauss, by Taylor, J.

8/26/41 Dism. as against Strauss, he having been duly executed under judgment on another indictment.

F. T.

C. J.

Endorsements on Indictment

67

Emanuel Weiss, alias "Weiss"

Pleads Not Guilty—No bail, remanded to the custody of U. S. Marshall for Eastern District of New York, to be detained at the Federal Detention Prison of New York for recall of Trial—April 11, 1941—Taylor, J.

Buchalter, defendant personally appears and advised by the Court of his rights pursuant to Sec. 308 C.C.P.—Have you a lawyer? Yes or no. Have you money to retain a lawyer? Yes or no.—Do you wish the Court to assign a lawyer? Yes or No.

68

Name of lawyer assigned.

Trial—Buchalter, Weiss, Cohen and Capone—August 4, 1941

August 5, 1941—Taylor, J.

2

Case set to Sept. 15, 1941

Woolsey W. Conlon—Juror in Box.

By Order of the Court—Capone committed to the N. Y. Tombs to await recall for Trial—August 5, 1941—Taylor, J.

September 15, 1941. Trial continued.

69

As to Defendant Philip Cohen; motion by Saul Price, Esq., for a separate trial as to Philip Cohen, defendant present.

Consented to by Burton Turkis, Esq., A.D.A. Motion for a severance Granted as to Philip Cohen. Philip Cohen remanded.

Taylor, J.—Sept. 15, 1941

As to defendant James Feraco:

Motion by Burton Turkis, Esq., A.D.A. for a severance as to James Feraco, defendant not present.

70

Endorsements on Indictment

Motion granted as to James Feraco.

Taylor, J. Sept. 15, 1941

Trial began August 4, and 5, 1941

Trial continued Sept. 16, 1941—Sept. 18—Sept. 19—Sept. 24, 25, 26, 29, 30.—October 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31.

Nov. 3, 5, 6, 7, 10, 12, 13, 14, 15, 17, 18, 19, 21, 22, 24, 25, 26, 28, 29, 30

71

Verdict—Buchalter, Weiss and Capone guilty of Murder in the first degree. All three remanded—Taylor, J.

11/30/41

Buchalter, Weiss, Capone Guilty of Murder in the first degree—Sentenced Dec. 2, 1941—

Buchalter, Weiss, Remanded in custody of U. S. Marshalls for the Eastern District of N. Y. to House of Detention, New York City.

Capone—Remanded to Tombs Prison, New York City—

Taylor, J.

11/30/41

72

Endorsements on Indictment

73

No. 23855

112/478a

 THE PEOPLE

vs.

LOUIS BUCHALTER, alias "Lepke"

EMANUEL WEISS, alias

"Mendy Weiss"

74

LOUIS CAPONE

Impleaded

 INDICTMENT

MURDER FIRST DEGREE

 A True Bill

JOHN B. MALONE

Foreman

75

 WILLIAM O'DWYER

District Attorney

 MURRAY KRIENDLER,

51 Chambers St., N. Y.

Atty. for Weiss

Filed May 28, 1940

76

(Pedigree)

LOUIS BUCHALTER

Counsel Assigned No

Sex Male—White

Age 44

Nativity New York City

Residence 427—West St.

Occupation Retired

Mechanical Trade No

Married Yes

77

Read and Write Yes

Degree of Education Public School Graduate

Religion Hebrew

Degree of Religious Instruction Irregular

Parents Mother living

Temperate Yes

Drugs No

Previous Conviction remains mute

Sentence To be put to death in the manner
provided by law on some day in the week be-
ginning the fourth day of January, 1942.

Taylor, J.—December 2, 1941

78

Pedigree of Emanuel Weiss

79

EMANUEL WEISS

Counsel Assigned No

Sex Male—White

Age 35

Nativity New York City

Residence 427 West St., Manhattan

Occupation Salesman

Mechanical Trade None

Married Yes

Read and Write Yes

Degree of Education Public School 6th grade

Religion Jewish

Degree of Religious Instruction—Irregular

Parents Mother living

Temperate Yes

Drugs No

Previous Conviction 2 misdemeanors 1 felony

Sentence To be put to death in the manner
provided by law on some day in the week be-
ginning the fourth day of January, 1942.

Taylor, J.—December 2, 1941

80

81

82

Pedigree of Louis Capone

LOUIS CAPONE

Counsel Assigned No

Sex Male—White

Age 44

Nativity Naples, Italy

Residence 2780 Stilwell Ave.

Occupation Restaurant Owner

Mechanical Trade None

Married Yes

83

Read and Write Yes

Degree of Education Public School Graduate

Religion Catholic

Degree of Religious Instruction Regular

Parents Father—living

Temperate Yes

Drugs No

Previous Conviction None

Sentence To be put to death in the manner provided by law on some day in the week beginning the fourth day of January, 1942.

Taylor, J.—December 2, 1941

84

**Order of Brancato, C. J., Denying Capone's
Application for Severance**

85

At a Term, Part I., of the County
Court of Kings County held at
the Court House thereof, 120
Schermmerhorn Street, Berough
of Brooklyn, City of New York,
on the 23rd day of June, 1941.

Present: Hon. PETER J. BRANCATO,
County Judge.

86

Indictment No. 23855

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs,
against

LOUIS BUCHALTER, alias "Lepke"; EMANUEL
WEISS, alias "Mendy Weiss"; HARRY STRAUSS,
alias "Pittsburgh Phil"; JAMES FERACO; PHILIP
COHEN, alias "Little Farvel"; LOUIS CAPONE,
Defendants.

87

The defendant, Louis Capone, having applied
to this court for an order severing the indict-
ment herein and granting to the defendant, Louis
Capone, a separate trial of the above charges
contained in the indictment, and the said motion
having duly come on to be heard on June 11,
1941, and Leon Fischbein, Esq., attorney for the

88

*Order of Brancato, C. J., Denying Capone's
Application for Severance*

defendant, Louis Capone, having appeared in support thereof, and the District Attorney of Kings County, by Burton B. Turkus, Assistant District Attorney, having appeared in opposition thereto and due deliberation having been had,

89

Now on reading and filing the notice of motion dated June 5, 1941; the affidavit of Leon Fischbein, duly verified June 5, 1941 and the exhibits submitted therewith, all submitted in support of said motion, and the affidavit of Burton B. Turkus, verified June 17, 1941, submitted in opposition thereto, and upon the opinion rendered on June 20, 1941, and upon all other papers and proceedings heretofore had herein, it is on motion of William O'Dwyer, District Attorney of Kings County,

ORDERED, that the said motion be, and the same hereby is, denied without prejudice to renewal of the motion before the trial court.

90

Enter:

PETER J. BRANCATO
County Judge.

Granted Jun. 23, 1941

FRANCIS J. SINNOTT
Clerk

Notice of Motion for Severance (Capone)

91

COUNTY COURT

KINGS COUNTY

Ind. #23855

In the Matter of the Application of

LOUIS CAPONE

92

for a Severance and Separate Trial of the action
of THE PEOPLE OF THE STATE OF NEW YORK,

against

EMANUEL WEISS, alias "MENDY WEISS," HARRY
STRAUSS, alias "PITTSBURGH PHIL," PHILIP
COHEN, alias "LITTLE FARVEL," LOUIS BUCHALTER,
alias "LEPKE," and LOUIS CAPONE,

Defendants.

93

SIR:

PLEASE TAKE NOTICE that upon the annexed
affidavit of Leon Fischbein, attorney for the de-
fendant, Louis Capone, herein duly acknowledged
the 5th day of June, 1941, and upon the indict-
ment and all the pleadings and proceedings here-
tofore had herein, the undersigned will move this
Court Part 1 thereof for the hearing of motions

94 *Notice of Motion for Severance (Capone)*

at the Courthouse located at 120 Schermerhorn Street in the Borough of Brooklyn, County of Kings, City and State of New York, on the 9th day of June, 1941 at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order severing the indictment herein and granting to the defendant Louis Capone a separate trial of the charges contained in the indictment pursuant to Section 391 of the Code of Criminal Procedure and for such other
 95 and further relief in the premises as to this Court may seem just and proper.

Dated: Brooklyn, New York, June 5th, 1941.

Yours, etc.,

LEON FISCHBEIN,
 Attorney for Defendant,
 Louis Capone,
 66 Court Street,
 Borough of Brooklyn,
 City of New York.

96

To:

Hon. WILLIAM O'DWYER,
 District Attorney,
 Kings County.

**Affidavit of Leon Fischbein, Read in Support
of Application for Severance (Capone)**

COUNTY COURT

KINGS COUNTY

In the Matter of the Application of

98

LOUIS CAPONE

for a Severance and Separate Trial of the action
of THE PEOPLE OF THE STATE OF NEW YORK,

against

EMANUEL WEISS, alias "MENDY WEISS," HARRY
STRAUSS, alias "PITTSBURGH PHIL," PHILIP
COHEN, alias "LITTLE FARVEL," LOUIS BUCHALTER,
alias "LEPKE," and LOUIS CAPONE,

Defendants.

99

State of New York	}	ss.:
City of New York		
County of Kings		

LEON FISCHBEIN, being duly sworn, deposes
and says that he is the attorney for Louis
Capone, one of the defendants herein.

Deponent makes this affidavit in support of an
application for an order severing the indictment

109 *Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

herein and granting to the defendant Louis Capone a separate trial of the indictment pursuant to Section 391 of the Code of Criminal Procedure.

101 The indictment herein was filed on the 28th day of May, 1940, charging the defendants with the crime of murder in the first degree, in that on or about the 13th day of September, 1936 in the County of Kings, the defendants willfully, feloniously and with malice aforethought shot and killed one Joseph Rosen with revolvers.

The allegations which your deponent shall hereinafter state are not in any way intended as a reflection upon the other defendants nor are these allegations made as a statement of fact or opinion as to their guilt or innocence.

102 Your deponent, however, shall submit in support of this motion facts which have created a condition whereby it would be impossible for the defendant Louis Capone to receive a fair and impartial trial if this motion were to be denied. The condition which your deponent refers to is one that has been created by the newspapers published in the metropolitan area and circulated throughout this county, state and nation. Your deponent, however, shall refer to and rely mostly upon the publication called the New York Times, which is and has always been considered a newspaper of conservative editorial policy and the subscribers and readers of this newspaper are persons of average intelligence and who rely upon this newspaper for their knowledge of the events and occurrences in the world of today and usually accept these news items as true.

*Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

103

The publicity and notoriety given to the other defendants in this case, and more particularly to the defendant, Louis "Lepke" Buchalter, in the public press, has undoubtedly created an impression that there is something sinister and unholy about the other defendants. This impression shall result in the creation of an atmosphere during the trial of these issues, prejudicial to the rights of the defendant, Louis Capone, to a fair and impartial trial.

104

The prosecution may urge in opposition to this motion that your deponent would have the right to challenge any prospective juror, for actual bias, who has an impression or opinion as to the guilt or innocence of the defendant formed as a result of reading from newspapers or his inability to render an impartial verdict upon the evidence uninfluenced by any opinion or impression that he may have. This fact is unquestionably true and although every man consciously feels that he could render such a verdict upon the evidence uninfluenced by extraneous matters, yet sub-consciously he cannot divorce his mind from that impression which has been created over a period of years as a result of what he has read and heard about the other defendants and more particularly the defendant, Louis "Lepke" Buchalter.

105

The defendant Louis Capone has never been convicted of any crime; he has resided in the Borough of Brooklyn for a long period of time with his wife and children. Prior to 1940 he was never linked in the press with rackets or racketeers, murderers or persons of sinister and

106 *Affidavit of Leon Fickbein, Read in Support of
Application for Severance (Capone)*

unlawful repute and has maintained himself as a family man with a definite aversion to publicity and with the exception of innuendoes and insinuations cast upon him in the press subsequent to this indictment, his life has been obscure.

107 The defendant Louis Buchalter, alias "Lepke" is a person of national prominence. The publicity which he has received by innuendo and suggestion, through the medium of radio and the press, has been such as to create the indubitable impression and opinion that he and his associates ruled a vast empire of crime in this country; that their actions were sinister and unlawful to such an extent that the lives of the people and the industry of this city and nation were endangered. The publicity that "Lepke" and his aides received was such that anybody falling into the category of being his aide, although even if not mentioned by name, would create such an unfavorable impression as to preclude the possibility of a juror deciding the issues solely upon the evidence uninfluenced by that impression regardless of the juror's expression of his belief that he could render a verdict solely upon the evidence and his ability to set aside all his prior impressions and opinions created by the press.

108

Over a period of years the press developed the sinister reputation of "Lepke" until at the present time he is depicted as a tyrannical king and overlord of crime. That he heads a mob of vultures, thieves and killers and if this application is not granted, Louis Capone cannot hope for or receive the type of trial guaranteed

Affidavit of Leon Fischbein, Read in Support of 109
Application for Severance (Capone)

to him by the constitution and the laws of the State of New York or the Constitution of the United States.

In substantiation of the aforementioned allegations, the files of the New York Times disclose that Louis "Lepke" Buchalter, alias "Buckhouse" was named in the Bakery Trucking racket. In 1935 he was under investigation by District Attorney Dewey as a controller of all major rackets. In 1936 he was named as the head of the Dress Industry racket. The press charged him with jumping bail, kidnapping, the garment racket, murders, one who caused witnesses to disappear, the flour racket, harboring of a fugitive, extortion, violation of the Anti-Trust Laws, and named as head of the racket which compelled payments to him and his aides in the Fancy Fur Dressing Industry. He was named as the head of a narcotic ring, smuggling and dope traffic, and was involved in a passport scandal. 110

The above are just some of the items that have been taken from the files of the publication hereinbefore mentioned. Your deponent made an extract of the Times Index, which briefly outlines the publicity given to Louis Buchalter, and submit this to the Court as proof of what has been published concerning the career of "Lepke" and his aides. 111

Your deponent once more calls to this Court's attention that the most conservative newspaper was chosen in order that there be no exaggeration of the publicity which "Lepke" and his aides received. It is needless for deponent to

112 *Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

make mention of the publicity given to him by the other tabloids and publications. Most of these items that appeared in the New York Times from the year 1935 up to the present date received first page publicity, "headline publicity." The other newspapers played these items up with greater effect, knowing that such news items appealed to the reading public.

113 After the Honorable Judge William O'Dwyer became the District Attorney of this county, he waged a campaign against crime, the likes of which have never been matched in the history of this state. Although the newspapers prior to 1940 vilified and degraded "Lepke" and his aides, the publicity which this campaign received magnified all prior news items to such a degree that the name "Lepke" stands out like a beacon light as the potential "Czar" and the No. 1 man of "Murder Incorporated."

The following are some of the typical headlines as found in the newspapers published in the year 1940:

114

"Twelve Gunmen Called Killers for Lepke".

"Two Lepke Men seized in Murder Inquiry".

In the World Telegram of March 23rd, 1940, the following article appeared:

"Murder, Inc. executives decided that Rudnick must be killed. Louis "Lepke" Buchalter, industrial racketeer, heard that they intended to rub out Rudnick and is said to have asked as a favor that they

*Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

115

use the killing to warn any former associates of "Lepke" who may be inclined to turn State's evidence for District Attorney O'Dwyer. For this reason Rudnick was killed as brutally as possible."

The World Telegram of April 6th, 1940 printed a three column diagram. This diagram contained a number of boxes, mentioning in these various boxes a number of men. Included therein were "Lepke" and "Gurrarh" and attached to these boxes by lines were other boxes and in each box, obviously referring to rackets, were names as follows: garment, fur, flour, trucking, bakery and narcotics. These were attached to the "Lepke" box. In this diagram Louis Capone's name was not mentioned. Below this diagram there appeared this news item:

116

"District Attorney O'Dwyer's inquiry into Brooklyn crimes quickly revealed the people who employed Brownsville and East New York hoodlums, Murder, Inc., to commit murder for hire. Chief of the Brooklyn mob was Abe Reles, whose lieutenants were Harry "Pittsburgh Phil" Strauss and "Happy" Maione. When the "Lepke", "Gurrarh" gang, Louis Buchalter and Jacob Shapiro, wanted murder done, they got in touch with Murder, Inc."

117

One cannot dispute the power of the press. The press can create good will and the press can create hatred. The effect that newspapers have

118 *Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

upon human beings is indescribable, and when one reads such news items as have been published up to the present date concerning "Lepke" and his aides, it is inconceivable that anyone reading such inflammatory matter can retain such equilibrium of mind as to be able to retain the ability to impartially weigh the legal evidence against the man jointly accused with the commission of crime with Lepke, because the mere placing him on trial with the other defendants would be indicative of an accusation that he is one of "Lepke's" aides.

119

It is an undisputed fact that millions of dollars are spent yearly by business in advertising through the medium of the press and the radio only because the public is influenced and guided by what it reads and hears. People suffering from ailments use patented products not because it is prescribed by physicians but because they are guided by what they read and hear.

120

In a perusal of the news items contained not only in the New York Times but in the other newspapers as well it is quite obvious that not once has any newspaper gone to the "front" for "Lepke" or his aides. All the newspapers have consistently been of one opinion concerning "Lepke." They have all characterized him in the same evil light. The force of the press would nullify any possibility of Louis Capone receiving a fair and impartial trial if he were to be tried together with the other defendants. A prospective juror could not under these conditions even recognize his own mental reaction to that which has been built up over a period of years and

*Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

121

although a prospective juror, when questioned as to his bias, prejudice, impressions and opinions, he would honestly answer those questions and yet subconsciously his prejudice would be beyond his control.

Your deponent submits clippings from The New York Sun and The World Telegram, from the Brooklyn Daily Eagle, from the Daily Mirror, from the Daily News, from the New York Post and from The Journal-American, which have been published since the arraignment of "Lepke." Some of these headlines were as follows:

122

- "Thirty Detectives Guard Lepke".
- "45 Cops, in Their Golden Badges, anger Lepke Hearing Judge".
- "Siegel Ordered Here for Lepke Inquiry".
- "Judge Flays 'Arsenal' of 47 Lepke Guards".
- "Judge Mocks Lepke Guards Filing Court".
- "Lepke Will Hear Murder Charge".
- "Murder, Inc., Job Told by State at Nitzberg Trial".
- "Lepke Reported 'Singing' to Escape Chair as Reles Tells of Murder Ordered by Him".
- "Ex-Girl Friend of Lepke on Stand".

123

His name appears in "The Lyons Den", an article written by Leonard Lyons.

On May 21st, 1941 in The Daily News he is mentioned in the Pete Clifford murder and he is also mentioned on June 2nd, 1941 in the

124 *Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

Journal-American and other newspapers when one Irving (Knadles) Nitzberg was sentenced to die in the electric chair as having been the one who killed Shuman for "Lepke."

That although your deponent submits these newspaper clippings in support of this application, these articles appeared in every metropolitan newspaper.

125 The other two defendants have been mentioned from time to time in the press and in proceedings in the Federal and State Courts as aides of the alleged Czar "Lepke."

126 Again deponent states that he does not know the truth or falsity of these alleged statements contained in the press, but the mere fact that they have been mentioned as associates of the man whose career has been painted from coast to coast as the ruler of a criminal empire, their mere presence with Louis Capone at the counsel table will strongly prejudice the jury against deponent's client and prevent him from receiving a fair and impartial trial. The rights of the People of the State of New York would not be defeated or prejudiced if this application is granted. It is true that there may be additional expenses involved but the rights of Louis Capone are also involved and must be considered and every effort should be made to protect those rights.

The Constitution of the State of New York and of the United States guarantees to every defendant a fair and impartial trial and any statute which is opposed to the spirit, intent and pur-

*Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

127

pose of the Constitution is as much within the condemnation of the organic law as though the intention to violate the Constitution were written in bold characters on the face of the statute itself.

It is obvious and apparent that Louis Capone, sitting at the counsel table with the other defendants mentioned in this indictment, cannot receive a fair and impartial trial for the very definite reason that the passions and prejudices of men who will be called upon to sit as judges of the fact will be swayed by the atmosphere created by the newspapers long before the defendant was joined in this indictment.

128

The laws of God and man gives your deponent the right to make this application on behalf of his client. To deny this application would amount to depriving this man not only of a fair and impartial trial but denies him the right to his day in Court as prescribed by law.

Your deponent urges this Court to exercise its discretion in order to prevent a great injustice being done to a man charged with the crime, the penalty of which calls for the forfeiture of his life.

129

Your deponent further states that there may be other conditions to contend with which unquestionably will militate against his client, without being required to be tried with the other above named defendants, and that is that the newspapers have created a mythical institution called "Murder, Inc." This organization, as created by the press, has been accused of many infamous and dastardly crimes.

130 *Affidavit of Leon Fischbein, Read in Support of
Application for Severance (Capone)*

WHEREFORE, in the interest of justice and to preserve the constitutional rights of the defendant Louis Capone and to continue what has always been the American way of determining the guilt or innocence of a man charged with a crime, your deponent earnestly prays that this motion be granted in all respects and that the indictment be severed and the defendant Louis Capone be granted a separate trial of the charge against him.

131

LEON FISCHBEIN

Sworn to before me this 5th }
day of June, 1941. }

MAX K. EHRLICH

Attorney and Counsellor at Law

Office Address—66 Court Street

Brooklyn, N. Y.

Kings County Clerk's #6—Reg. #3002

132

Exhibits Annexed to Affidavit of Leon Fischbein**133****THE NEW YORK TIMES INDEX TO LOUIS BUCHALTER****PAGE 659 NEW YORK TIMES INDEX YEAR 1935**

Oct. 12 p. 2—c. 3
 "Louis Buchalter alias Buckhouse and Jacob Shapiro under Investigation by Thomas E. Dewey."

Oct. 16 p. 48—c. 2
 "Louis Buckhouse and Jacob Shapiro under investigation by Dewey; 19 cartons of business records taken from Perfection Cost Front Mfg. Co., Inc. and 14 persons taken as witnesses; police records of Buckhouse and Shapiro."

134**PAGE 660 NEW YORK TIMES INDEX YEAR 1936**

Oct. 26 p. 1—c. 5
 "New group (including Lepke) takes over control of all major rackets. Gangs headed by C. Luciano, C. Siegel, M. Lansky, L. Buckhouse, J. Shapiro and A. Zwillman."

PAGE 667 NEW YORK TIMES INDEX YEAR 1936**135**

Apr. 30 p. 44—c. 4
 "O. Saffer accused of being payoff man for J. Shapiro and L. Buckhouse in industrial rackets."

July 8 p. 1—c. 4
 "Loma Dress Company raided. Interest of Buckhouse and Shapiro recalled."

July 10 p. 40—c. 4
 "Buckhouse and Shapiro missing from city for 2 weeks."

*** (p. stands for page; c. stands for column.)

136

Exhibits Answered to Affidavit of Leon Fischbein

PAGE 698 NEW YORK TIMES INDEX YEAR 1936

Oct. 22 p. 1—c. 4

"Dewey raid in Bakery racket reveals L. Buchalter and J. Shapiro connection."

Page 884 p. 17—c. 2

"U. S. Circuit Court confirms conviction of J. Shapiro 'Gurrarh' sets aside that of Lepke Buchalter."

July 7 p. 17—c. 2

"Buchalter and Shapiro flee trial. Bail forfeited."

137

PAGE 176 NEW YORK TIMES INDEX YEAR 1937 AND PAGE 177

Sept. 25 p. 1—c. 3

"Thomas E. Dewey announces arrest of Max Silverman in Los Angeles Telegrams. Show Shapiro and Buchalter supplied Silverman with funds."

Sept. 28 p. 1—c. 2

"Extortion indictment names Shapiro, Buchalter."

138

PAGE 885 NEW YORK TIMES INDEX YEAR 1937

Nov. 6 p. 4—c. 2

"Lepke Buchalter and Gurrarh Shapiro sought in Anti Trust action in fancy fur dressing industry."

Nov. 9 p. 1—c. 2

"Government posts reward for information leading to arrest."

Nov. 17 p. 1—c. 2

"Buchalter alias Lepke evades arrest on Drug Traffic charge."

Exhibits Annexed to Affidavit of Leon Fischbein

139

PAGE 28 NEW YORK TIMES INDEX YEAR 1938

- Jan. 7 p. 1—c. 1)
 Jan. 8 p. 1—c. 1) man whose photo resembles
 "Louis "Lepke" Buchalter got passport
 through County Clerk Marinelli's office."

PAGE 1825 NEW YORK TIMES INDEX YEAR 1938

- Feb. 19 p. 32—c. 6
 "Shapiro and Lepke sought in Poland for
 Kidnapping threats."

- Apr. 15 p. 1—c. 3
 "Shapiro surrenders to Federal Court
 named as aide Lepke Buchalter."

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- Apr. 16 p. 3—c. 1
 "S. Schwartz aide to Lepke returned to
 U. S. as part of a narcotic ring."

- June 12 p. 40—c. 1
 "Testimony by witness that payments were
 made to Buchalter and Shapiro in behalf
 of Fur Dressers Factor Corporation."

- June 17 p. 6—c. 4
 "Witness describes threats and pressure
 methods used against dealers."

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- July 29 p. 1—c. 5
 "Dewey asks City to increase reward for
 Louis Lepke Buchalter co-defendants in
 Garment and Bakery Racket Cases. Cites
 murders and disappearances of former
 associates. Reviews cases and makes
 statement."

- July 30 p. 1—c. 5
 "LaGuardia backs higher reward. Dewey
 asks Board of Estimate to appropriate
 sum."

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Aug. 1 p. 1—c. 4
 “Tootsie Cohen, former Buchalter (Lepke) aide, held in high bail as witness; police plan wide Lepke search; grand jury subpoenas garment and bakery firms books to stop payments to Lepke.”

Aug. 2 p. 7—c. 5
 “Estimate Board to act on Dewey’s plan for higher reward.”

143 Aug. 3 p. 1—c. 3
 “Dewey aides confer with police on Lepke search plans; Borough President Lyons backs higher reward.”

Aug. 6 p. 6—c. 1
 “Comment on Lepke search.”

Aug. 7 p. 3—c. 4
 “Police check rumors Lepke has been killed. F.B.I. denies he is held.”

Aug. 8 p. 1—c. 4
 “Estimate Board votes higher reward.”

Aug. 10 p. 5—c. 4
 “Rumors of Lepke capture denied. Dewey postpones his vacation.”

144 Aug. 23 p. 13—c. 1
 “Wife testifies before Grand Jury.”

Aug. 25 p. 1—c. 4
 “Lepke surrenders to F.B.I. Never left New York City; criminal career reviewed.”

Aug. 26 p. 32—c. 3
 “Lepke indicted and arraigned on Federal charges of narcotics smuggling; pleads not guilty; Dewey aides not allowed to question him.”

- Aug. 27 p. 15—c. 1
 “Lepke questioned by F.B.I. and U. S. Atty. Gen. Cahill’s aides; Dewey aides excluded from hearing.”
- Aug. 29 p. 13—c. 3
 “Lepke arraigned; gets more time to hire counsel; harboring defendants trial set.”
- Aug. 30 p. 1—c. 3
 Lepke hires counsel. Appears in court.
- Aug. 31 p. 20—c. 3
 “Gets postponement of hearing.”
- Sept. 1 p. 11—c. 6
 “New York City rescinds Buchalter (Lepke) reward.”
- Sept. 3 p. 2—c. 5
 “Emanuel “Mendy” Weiss, narcotics smuggling aide, held by Federal agents.”
- Sept. 12 p. 27—c. 2
 “Asks release on habeas corpus writ. Lepke’s trial tentatively set.”
- Sept. 16 p. 34—c. 2
 “Lepke transferred to another jail.”
- Sept. 17 p. 51—c. 4
 “Dewey aide again denied permission by Federal agents to question Lepke.”
- Sept. 29 p. 46—c. 4
 “B. Siegel, Federal crime inquiry witness, jailed for refusal to answer question on talk with Lepke.”
- Oct. 3 p. 24—c. 2
 “Dismissal of indictments against 7 for harboring Lepke asked.”
- Oct. 4 p. 52—c. 2
 “Siegel freed after answering questions on Lepke talks.”

- Oct. 20 p. 14—c. 5
 "Trial of C. Shapiro and 4 others on charge of harboring Lepke and J. Shapiro postponed."
- Oct. 25 p. 14—c. 4
 "Court refuses to dismiss indictment."
- Oct. 31 p. 24—c. 2
 "Trial set. Snyder murder trial also set."
- Nov. 1 p. 14—c. 5
 "Trial of C. Shapiro and 4 others opened."
- 149 Nov. 3 p. 22—c. 2
 "M. and H. Silverman and S. Schorr arraigned on extortion charges in bakery and flour racket. J. Miller, Government witness, and 4 defendants testify in Shapiro trial."
- Nov. 9 p. 10—c. 2
 "Lepke trial delayed."
- Nov. 22 p. 30—c. 7
 "Judge Knox to preside."
- Nov. 24 p. 42—c. 4
 "H. Greenberg (G. Schaeter) slain, Hollywood."
- 150 Nov. 26 p. 13—c. 1
 "Jury chosen."
- Dec. 1 p. 15—c. 1
 "Narcotics trial of Lepke, D. Kardonick, M. Schmukler and M. Sweder opened."
- Dec. 12 p. 31—c. 4
 "I. Mandel, sought by Government as Lepke witness, slain."
- Dec. 20 p. 26—c. 2
 "Defense sums up."

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- Dec. 21 p. 1—c. 4
 “Lepke and Schmukler convicted.”
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- Apr. 5 p. 1—c. 1
 “I. Bernstein alleged trigger man and C. Siegel Lepke aide reported in New York City to silence witnesses.”
- Apr. 13 p. 9—c. 2
 “Two witnesses reveal they hid Lepke at request of Abe Reles.”
- Apr. 14 p. 24—c. 3
 “Reles links Lepke to J. Rosen murder.”

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- May 24 p. 21—c. 1
 “Lepke Buchalter indicted in M. Diamond and J. Cohen murders.”

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- July 30 p. 21—c. 7
 “Court clears C. Shapiro and four others in connection with harboring Lepke and J. Shapiro.”

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- PAGE 178 NEW YORK TIMES INDEX YEAR 1940
- Aug. 21 p. 40—c. 1
 “Lepke and four others indicted for murder of H. Greenberg in Los Angeles, Cal.”
- PAGE 186 NEW YORK TIMES INDEX YEAR 1940
- Feb. 2 p. 19—c. 4
 “Jury picked to try Lepke on flour and bakery racket charges. Jury locked up.”

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Feb. 3 p. 30—e. 2
 "A. Held, United Flour Trucking Co. official, testifies to extortions by Lepke, S. Schorr, W. Goldis and M. Silverman."

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Feb. 20 p. 14—e. 7
 "Five counts against Lepke and H. and M. Silverman quashed."

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Feb. 21 p. 3—e. 1, 5
 "Two more counts quashed; defense confers with court on guilty pleas; trial of 28 in fur racket case opens."

Feb. 28 p. 23—e. 8
 "Defense ends summation."

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Mar. 1 p. 11—e. 4
 "Lepke bakery trucking racket case to go to jury."

Mar. 2 p. 1—e. 1
 "Lepke and M. and H. Silverman convicted."

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Mar. 5 p. 44—e. 2
 "Lepke examined by court psychiatrists."

Mar. 15 p. 15—e. 1
 "W. Karpouzas recants testimony that B. Gold, I. Potash and other union leaders asked him to use force to organize Needle Trades Workers Indus. Union; blames prosecutor; U. S. Atty. Cahill starts inquiry; fur workers back union at rally."

Mar. 31 p. 8—e. 1
 "Sentencing of Lepke and M. and H. Silverman postponed."

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Jan. 3 p. 1—c. 4
 "Lepke sentenced on narcotics and flour racket charges; to be tried by Dewey on flour racket charges."

Jan. 5 p. 42—c. 4
 "Shapiro, Lepke and others to be indicted on garment industry racket charge; Lepke refused to plead to flour-trucking racket charge."

Jan. 6 p. 30—c. 6
 "Federal Court denies plea to save him from State prosecution on flour-racket charge."

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Jan. 7 p. 24—c. 6
 "Transfer from Federal to State jurisdiction stayed pending Circuit Appeals Court hearing."

Jan. 9 p. 24—c. 3
 "Circuit Appeals Court reserves decision."

Jan. 10 p. 14—c. 5
 "Denies plea; C. Shapiro, N. Borish and S. Smith sentenced for harboring Lepke; F. Dwyer and P. Kasakove get suspended sentences."

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Jan. 11 p. 25—c. 4
 "Lepke pleads not guilty to flour-racket charge."

Jan. 16 p. 13—c. 1
 "Lepke flour-racket trial date set; court assigns counsel."

Jan. 17 p. 5—c. 3
 "J. Shapiro, Lepke and 7 indicted on garment industry racket charges; victimized firms listed."

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- Jan. 18 p. 2—c. 7
 "Three Lepke aides plead not guilty to garment industry racket charge."
 Jan. 25 p. 1—c. 4
 "W. Goldis pleads guilty to bakery and flour-trucking racket extortion attempt. Berated by Lepke; trial adjourned."
 Jan. 27 p. 30—c. 2
 "Trial of Lepke and 3 on flour racket charges opened."

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- Jan. 30 p. 2—c. 4
 "Lepke jurors chosen."

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- Apr. 6 p. 7—c. 1
 "Lepke and H. and M. Silverman sentenced for flour and bakery racket."
 Apr. 9 p. 14—c. 5
 "I. Potash and 2 ask indictment dismissal in Needle Trades Workers Indus. Union case."

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- Apr. 14 p. 14—c. 3
 "B. Gold and 10 found guilty. 7 acquitted."
 Apr. 25 p. 14—c. 6
 "Gold, Potash and 9 freed on bail."

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- Jan. 31 p. 38—c. 4
 "P. (Little Farvel) Cohen and 3 others convicted Drug Traffic."

**Affidavit of Leon Fischbein, Sworn to August
4, 1941, Read in Support of Application
for Severance (Capone)**

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COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs,
against

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LOUIS BUCHALTER, alias "Lepke"; EMANUEL
WEISS, alias "Mendy Weiss"; HARRY STRAUSS,
alias "Pittsburgh Phil"; JAMES FERACO; PHILIP
COHEN, alias "Little Farvel"; LOUIS CAPONE,
Defendants.

State of New York }
City of New York } ss.:
County of Kings }

165

LEON FISCHBEIN, being duly sworn, deposes and
says

That he is the attorney for Louis Capone, one
of the defendants herein. That in his capacity
as attorney for Louis Capone he made a motion
before Judge Brancato, one of the Judges of
this Court on the 11th day of June, 1941 for a
severance of this indictment and a separate trial
of the issues in this case in so far as the said
Louis Capone was concerned. That the grounds

166 *Affidavit of Leon Fischbein, Sworn to August 4, 1941, Read in Support of Application for Severance (Capone)*

of such motion are set forth in the moving papers and exhibits submitted in support of such moving papers which are on file in this Court.

That after hearing argument on said motion, Judge Brancato in a decision dated the 17th day of June, 1941 denied the application but granted leave to renew the application before the trial judge and an order was duly entered to that effect on the 23rd day of June, 1941.

167 That your deponent now renews such motion and makes the affidavits and exhibits heretofore used in support of the application before Judge Brancato for a severance and separate trial for Louis Capone, part of this motion as though they were annexed hereto and fully set forth herein.

The application before Judge Brancato was on the ground that Louis Capone could not and would not receive a fair and impartial trial if tried together with the defendant Louis Buchalter, alias Lepke. That the name Lepke has been synonymous with crime and rackets and he had been given so much publicity that the newspaper reputation of Lepke will build up a prejudice against the defendant Louis Capone and prevent him from receiving a fair trial.

168 The defendant Capone has been practically unheard of in the newspapers and has received no publicity which would cause members of a jury to consider him a sinister or notorious character. Yet if he is forced to trial with the defendant Buchalter all the adverse publicity and the newspaper reputation of Lepke will most assuredly militate against him by the very fact that he is on trial with Lepke. Try as they will the mem-

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bers of the jury will consciously or unconsciously find it impossible to divorce their minds from everything written and said about Lepke and will consciously or unconsciously be prejudiced against Capone by reason of the fact that he is on trial with Lepke. The interests of the defendants Capone and Lepke are antagonistic for this reason.

170

As an indication of the extent to which they are antagonistic your deponent submits herewith and makes a part hereof newspaper clippings of various metropolitan papers published yesterday and which announced the fact that this action was to be tried today. It is apparent that the reading public is interested in Lepke. He is the news. The other defendants are merely tacked on to him. Your deponent submits that this makes the interests of Capone and Lepke antagonistic: that Capone is entitled to receive a fair and impartial trial uneffected by passion or prejudice. Yet how can he receive such a trial? The newspapers as the attached clippings show heralded the trial of Lepke and told of the unusual and heavy guard which would attend the trial not only in the courtroom itself but in the court house and outside in the street around the court house. The atmosphere so created is highly prejudicial to a defendant and makes an indelible impression on jurymen. The presence in the courtroom itself of an armed guard will always be before this jury and will consciously or unconsciously be used against all the defendants. Capone has nothing to do with creating this atmosphere. It is the result of the news-

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- 172 *Affidavit of Leon Fischbein, Sworn to August 4, 1941, Read in Support of Application for Severance (Capone)*

paper publicity and criminal reputation of the defendant Lepke. He is now under sentence in the Federal Prison. The federal authorities are in the courtroom notwithstanding the fact that there is also present an unusually heavy police guard. The number of attendants has been doubled.

- 173 This atmosphere would never exist if Capone were tried alone. He is not a notorious character as the jury will think from the very fact he is brought to trial with Lepke. His Constitutional right to a fair and impartial trial unaffected by prejudice or passion is denied him and will be denied him if he is forced to trial with Lepke. The district attorney knows this and on the previous application said that Capone has been neglected by the newspapers but that he will see that he is not neglected in the future. This is not the American way of trying a man for his life. Placing a man on trial for murder in an atmosphere that exists here today solely because of the presence of the defendant Lepke is a violation of the fundamental law of this land and violation of the sacred Constitutional right given to every man to a fair trial.
- 174

The defendant Capone cannot efface what has already happened in this courtroom. The impressions made on the jury by reason of the atmosphere will remain with them as long as they live. This condition was created solely by the presence of Lepke and definitely makes the interests of the defendants Lepke and Capone antagonistic.

As set forth in the memorandum of law furnished upon the motion before Judge Brancato

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the test and only test as to whether a separate trial in a criminal action should be granted when such an application is made is "Can the defendant receive a fair and impartial trial if tried together with the other defendants." This rule was laid down a long time ago and has been consistently followed by our honored Courts. This test must be applied in this case and the only answer is that because of the unusual atmosphere, the notorious and infamous newspaper reputation of Lepke, Capone cannot receive a fair and impartial trial uneffected by passion and prejudice.

176

Louis Capone under these circumstances cannot receive a fair trial and the district attorney of Kings County in the interests of justice should join in the application to the end that the fundamental principal of American fair play will continue unsullied and unblemished.

WHEREFORE your deponent prays that an order be made and entered severing this indictment and granting to the defendant Louis Capone a separate trial of the issues herein.

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LEON FISCHBEIN

Sworn to before me this 4th }
day of August, 1941. }

FRANCIS J. SULLIVAN

FRANCIS J. SULLIVAN

Attorney and Counsellor at Law

66 Court St., B'klyn., N. Y.

Kings Co. Clks. No. 9 Reg. No. 2010

Commission expires March 30, 1942

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* SUNDAY NEWS, AUGUST 3, 1941 • 32

**BIG POLICE GUARD FOR LEPKE
MURDER TRIAL**

Arrangements were completed yesterday for a heavy police guard in Brooklyn County Court when Louis (Lepke) Buchalter goes on trial tomorrow for the murder of Joseph Rosen on Sept. 13, 1936.

179

Emanuel (Mendy) Weiss, Phillip (Little Farvel) Cohen and Louis Capone will be tried with Lepke for the shooting of the Brooklyn candy store proprietor.

A squad of 15 uniformed police under a sergeant has been detailed to guard the doors of the courtroom and the building corridors. Inside the courtroom a dozen or more detectives will be scattered among the spectators.

U. S. MARSHAL ON GUARD.

180

In addition, a number of United States marshals will be on hand, because Buchalter and Cohen have already been convicted on federal offenses and Weiss is waiting trial on a Federal indictment.

Two hundred and fifty talesmen from the blue ribbon jury list have been directed to appear in County Judge Franklin Taylor's court for examination as prospective jurors.

Lepke, who for more than a year was the nation's most widely publicized fugitive from justice until he surrendered voluntarily to the Federal Bureau of Investigation, was returned

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to New York from Leavenworth prison to be tried.

Rosen was snuffed out in his candy store at 725 Sutter ave., Brooklyn, a few days before he was scheduled to appear as witness for District Attorney Dewey against Lepke during an investigation of the trucking racket.

Burton B. Turkus and Solomon A. Klein, assistants to District Attorney William O'Dwyer, will be in charge of the prosecution.

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BROOKLYN EAGLE, SUNDAY, AUG. 3, 1941 A3

BIG POLICE DETAIL TO GUARD TRIAL OF LEPKE AND THREE

FEDERAL AND LOCAL OFFICERS ASSIGNED TO
'BLUE RIBBON' CASE

Arrangements were completed yesterday for stationing of a heavy police guard in County Court tomorrow, when Louis (Lepke) Buchalter is scheduled to go on trial on an indictment charging him with first degree murder.

183

Co-defendants with Buchalter are Emanuel (Mendy) Weiss, Louis Capone and Philip (Little Farvel) Cohen. They are charged with the fatal shooting on Sept. 13, 1936, of Joseph Rosen, Brooklyn candy store proprietor, in his establishment at 725 Sutter Ave.

Buchalter and Cohen, who have already been convicted of Federal offenses, and Weiss, who is awaiting trial on a Federal indictment, will be heavily guarded by United States Marshals. Fur-

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ther precautions, however, have been taken by local authorities. A police sergeant, 15 policemen and an undetermined number of plain clothesmen have been detailed to guard not only the courtroom and corridors but the outside of the court building as well.

BLUE RIBBON JURY TRIAL.

185 Trial of the four defendants is scheduled to take place before County Judge Franklin Taylor and a blue ribbon jury. A panel of 250 talesmen has already been chosen.

Prosecution will be in charge of Assistant District Attorneys Burton B. Turkus and Solomon A. Klein, who successfully prosecuted Harry (Happy) Maione and Frank (The Dasher) Abbandando and Harry (Pittsburgh Phil) Strauss and Martin (Bugsy) Goldstein in the first two trials resulting from District Attorney O'Dwyer's investigation of Murder, Inc.

186 Rosen, with whose death the quartet are charged, was slain several days before he was to have appeared as a witness for District Attorney Thomas E. Dewey in Manhattan in the investigation into Buchalter's alleged activities in the New York trucking racket.

SUNDAY MIRROR AUGUST 3, 1941

6 LEPKE WILL GO TO TRIAL TOMORROW

S A heavy police guard
 U will be stationed in Brook- : :
 N lyn tomorrow when Louis : :
 D (Lepke) Buchalter goes to : :
 A trial on first-degree mur- : (PICTURE) :
 Y der indictment. : :

Co-defendants are Eman- : :
 M uel (Mendy) Weiss, Louis : :
 I Capone and Phillip (Little
 R Farvel) Cohen. They are : Louis Buchalter :
 R charged with the fatal : Heavy police detail :
 O shooting on Sept. 13, 1936, : will guard courtroom :
 R of Joseph Rosen, Brook- : during his trial :
 lyn candy store proprietor.

188

A Buchalter and Cohen have already been convicted
 U of Federal offenses.

G A police sergeant, 15 policemen and an unspeci-
 U fied number of plainclothes men have been detailed
 S to guard the courtroom, corridors and the outside
 T of the building.

189

3 Trial of the four defendants is scheduled before
 County Judge Taylor and a blue ribbon jury. A
 panel of 250 talesmen has been drawn.

1 Prosecution will be in charge of Assistant Dis-
 9 trict Attorneys Turkus and Klein, who successfully
 4 prosecuted Harry (Happy) Maione and Frank (The
 1 Dasher) Abbando and Harry (Pittsburgh Phil)
 Strauss and Martin (Buggy) Goldstein in the
 first two trials resulting from District Attorney
 O'Dwyer's investigation of the Brooklyn Murder
 Ring.

Rosen, with whose death the four are charged,
 was slain several days before he was to have ap-
 peared as a witness for District Attorney Dewey
 in the investigation of Buchalter's activities.

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NEW YORK JOURNAL AMERICAN

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DOUBLE GUARD AT LEPKE TRIAL

191 Kings County Court will be like an armed camp tomorrow, when 50 guards patrol the steps, corridors and courtrooms. The reason? Louis (Lepke) Buchalter goes to trial on a first degree murder charge before Judge Franklin Taylor and a blue ribbon jury.

Lepke and his co-defendants, Emanuel (Mendy) Weiss; Louis Capone and Philip (Little Farvel) Cohen, are charged with the shooting on Sept. 13, 1936, of a Dewey witness, Joseph Rosen, in the latter's candy shop at 725 Sutter Ave., Brooklyn.

Burton B. Turkus and Solomon A. Klein, who have conducted District Attorney O'Dwyer's trials of the Brooklyn murder ring, will prosecute Lepke.

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**Affidavit of Burton B. Turkus, Read in
Opposition to Application for Severance
(Capone)**

193

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,

194

Plaintiffs,

against

LOUIS BUCHALTER, alias "Lepke", EMANUEL
WEISS, alias "Mendy Weiss", HARRY STRAUSS,
alias "Pittsburgh Phil", JAMES FERACO, PHILIP
COHEN, alias "Little Farvel", LOUIS CAPONE.

Defendants.

State of New York }
County of Kings } ss.:

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BURTON B. TURKUS, being duly sworn, deposes and says, that he is an Assistant District Attorney of the County of Kings and Chief of the Homicide Bureau of the District Attorney's Office. This affidavit is submitted in opposition to the motion made by the defendant Capone for an order severing the indictment herein and granting to him a separate trial.

The indictment against the defendants was filed in the County Court of Kings County on

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May 28, 1940, charging them with the crime of Murder in the First Degree, committed as follows:

"The defendants on or about September 13, 1936, in the County of Kings, wilfully, feloniously and with malice aforethought, shot and killed Joseph Rosen with revolvers."

197 With the exception of the defendant James Feraco all of the defendants have been duly arraigned and pleas of not guilty duly and properly entered and issue joined. The District Attorney intends to proceed with the trial of this case on or about July 14, 1941.

The present motion seeks a severance upon the alleged ground that the wide newspaper publicity received by the co-defendant Buchalter has been of such a nature as to prevent the defendant Capone from receiving a fair and impartial trial. In an attempt to support this contention the defendant Capone submits the affidavit of his attorney, Leon Fischbein, a resume of the New York Times Index, and various newspaper clippings relating to the activities of the defendant Buchalter and others. Based upon the newspaper clippings, Mr. Fischbein speculates that because Buchalter has received unfavorable newspaper publicity, neither Capone nor any other co-defendant jointly tried with him can receive a fair and impartial trial. It is worthy of note that not a single affidavit from a citizen of the community or from one qualified to preside as a

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juror is produced to substantiate the speculation and partisan point of view entertained by Capone's counsel.

It would indeed be a sad commentary upon the intelligence and integrity of the citizens of Kings County that out of its vast population of approximately two and one-half million people, twelve men could not be found among the qualified jurors to give the defendant a fair and impartial trial, to decide the merits of the case on the evidence uninfluenced by newspaper stories relating to a co-defendant. The moving affidavit would have us believe that such is the case.

200

The argument made on behalf of the defendant completely disregards the law regulating the selection of a fair and impartial jury. We all know the ephemeral nature of impressions derived from reading the public prints. The community is fed on horrors daily, almost hourly, and one sensation crowds out the previous one. So thoroughly is this known that it is provided in Section 376 of the Code of Criminal Procedure that:

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"the previous expression or formation of an opinion or impression in reference to the guilt or innocence of the defendant, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual bias, to any person otherwise legally qualified, if he declares on oath, that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence and the court is satisfied that he does not entertain such

202 *Affidavit of Burton B. Turkus, Read in Opposition to Application for Severance (Capone)*

a present opinion or impression as would influence his verdict."

203 In this connection, it is significant that the above quoted provisions of law deal with a situation where a prospective juror has formed an opinion as to the guilt or innocence of the defendant affected thereby. The defendant Capone's speculations are based not upon any contention that newspaper publicity has created any prejudices against him, but that he will indirectly be affected by prejudices supposedly created against the co-defendant Buchalter. This argument rests upon a double assumption, first, that no jury could be found qualified to give Buchalter a fair and impartial trial, and, second, if such be the fact then the supposed prejudices against Buchalter must preclude the possibility of a jury being capable of passing upon the merits of the case against the defendant Capone because the publicized Buchalter is seated alongside of him at the trial. Such surmise and speculation does not present any compelling reason for deviating from the statutory rule that defendants jointly indicated should be jointly tried. Furthermore, the defendant Capone completely disregards the special provisions made by law to protect a defendant's rights in cases where there has been widespread newspaper publicity. Under such circumstances the Judiciary Law, Section 749-aa, permits the defendant or the District Attorney to apply for a special jury. Subdivision 2 of that statute affords ample protection against the selection of any juror who may be biased because of newspaper comments. It provides that:

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"No person shall be selected as such special juror * * * who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression * * *."

It is evident from the foregoing that the co-defendant Buchalter can and will receive a fair trial by fair and impartial jurors. A fortiori, the defendant Capone who predicates his contention upon alleged prejudice against the co-defendant Buchalter, must necessarily receive such fair and impartial trial.

206

Apart from the foregoing, defendant Capone attempts to create the impression that he has lived a life free from all association or connections with organized murders. The fact, however, is that far from being the family man who has lived a life of obscurity, which Mr. Fischbein portrays for him, the defendant Capone has been the associate and active partner of organized criminals. The confidential files and records of the District Attorney's Office reveal that the defendant Capone was the mentor of Harry "Pittsburgh Phil" Strauss (named as co-defendant with him in this indictment), Martin "Bugsy" Goldstein, Abe Reles, Harry "Happy" Maione, and Frank "Dasher" Abbando, all of whom have been revealed in courts of record as being hardened and vicious members of organized murder. Two of his pupils, namely, Strauss and Goldstein have recently been electrocuted, two

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others, Maione and Abbando await electrocution. These characters were schooled and trained by the defendant Capone. After receiving their training from the defendant Capone, he embraced them as his partners in crime. The records of the trials of Strauss, Goldstein, Maione and Abbando conclusively establish that Capone was their partner in union-sluggings, extortions, shylocking and murder incidental to their business.

209

It is true that the defendant Capone has thus far been able to escape conviction for his criminal activities. None the less he is not an unknown character to law-enforcement agencies, nor has he been since 1930 when he was first arrested on a gun charge. Attached hereto is a copy of the criminal record of the defendant Capone as certified by the commanding officer of the Bureau of Criminal Identification. In addition thereto, the defendant Capone has been an active participant, as disclosed by the records of the District Attorney's Office, in five murders exclusive of the Rosen Killing. At least one of these murders, the killing of an innocent man by mistake (Irving Penn) was committed in conjunction with and pursuant to the directions of the co-defendant Buchalter.

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In conclusion, the defendant Capone is a man who for the greater part of his life has been engaged in organized crime, participating in murders incidental to the transaction of his illicit business when the occasion required, and who now claims that because he succeeded in hiding behind the mask of alleged respectability that his

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rights would be invaded if he were tried with the man who committed crime with him. There is thus neither basis in law nor in justice for the granting of a severance upon the ground presented.

WHEREFORE, your deponent respectfully submits that the motion should be denied without prejudice to renew before the trial judge.

BURTON B. TURKUS

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Sworn to before me this 17th }
day of June, 1941. }

CHARLES T. SCHACK,
Notary Public Kings County
Kings Co. Clk's No. 1099, Reg. No. 3346
Commission Expires March 30, 1943

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**Opinion of Brancato, C. J., Denying
Application for Severance (Capone)**

Motion for a separate trial pursuant to Section 391 Code of Criminal Procedure Denied.

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The only issue presented on this motion by the defendant Louis Capone, the moving party, is whether the reputation for obedience to law and order of one of his codefendants, Louis Buchalter, alias "Lepke", is so "sinister" and vicious and his own so "obscure" and good, that for him to be tried jointly with the said "Lepke", upon an indictment charging them both and others with first degree murder, would be tantamount to depriving him of a fair and impartial trial in violation of constitutional guarantees.

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The right to a separate trial afforded defendants for upward of a century, was revoked by the Legislature for reasons of public policy in July, 1926 when it enacted Section 391 Code of Criminal Procedure. By the provisions of this Statute the Court is now vested with the discretionary power to grant a separate trial for cause. The Legislature not having seen fit to set fixed bounds to the exercise of the discretion restored to the Courts, there is no general rule limiting or governing the Court's exercise of said discretion. Hence, its decision rendered before trial is dictated by a reasonable anticipation based on the facts then disclosed: (Peo. v. Deran 246 N. Y. 409; Peo. v. Snyder 246 N. Y. 491; Peo. v. Fisher 249 N. Y. 419; Peo. v. Feolo 282 N. Y. 276; Peo. v. Wargo 149 Misc. 461; Peo. v. Lashkowitz 166 Misc. 640.)

Intensely adverse interests between defendants coupled with the fact that a defendant, confessing to the authorities his participation in the com-

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mission of a crime, implicated a codefendant who made no such confession, has been considered sufficient justification for the Court to exercise the judicial discretion contemplated by the Statute under consideration (*People v. Feolo*; *People v. Wago*; *People v. Lashkowitz*, *supra*.) I have not been referred, however, to any reported case as authority for the proposition herein urged by the defendant Capone, that a separate trial be granted to a defendant solely because, forsooth, the criminal activities and history of a codefendant have been publicized by our daily papers more extensively than his own. Conceding that the searching eye of an alert public press in this City has been focused upon Lepke's alleged many encounters with the Penal Law, resulting even in amazing revelations, I am unwilling to subscribe to the assumption in the general proposition, that a jury of intelligent citizens will be influenced thereby not only against Lepke but will also transcend their prejudice against a codefendant to the extent of depriving the latter of a fair and impartial trial. Our experience in the administration of the Penal Law, negatives any such assumption.

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Our Laws give to a defendant accused of murder, a wide latitude in examining the qualifications of the individual prospective jurors. A defendant is provided with thirty peremptory challenges and an unlimited number of challenges, for cause (Sec. 373—Code of Criminal Procedure) and ample means to select from the various walks of life, fair-minded intelligent and unbiased judges of the facts who can discern

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and can divorce themselves from the prejudices which would inflict upon one defendant the ill effects of the sinister reputation of a codefendant: (Judiciary Law Sec. 749aa; sub. 2.)

221 The moving defendant refers us to the learned opinion in the case of *Peo. v. Hines* 168 Misc. at 470, wherein it is stated that the Court would have been disposed to grant the defendant a severance of the indictment and a separate trial, "were the moving defendant to be surrounded upon the trial by a larger group of codefendants having criminal records or unsavory reputations." The underlying principle enunciated has no application in the case at bar. Of the defendant Hines, Mr. Justice Pecora in his opinion stated that "many of the newspaper articles present the defendant as an attractive personality, and might well be considered as exciting sympathy for him rather than prejudice." However sinister be the reputation of Capone's codefendants (and it is not my purpose to divine what facts will be adduced at the trial nor to prophesy the result thereof,) the record impels the conclusion herein that Capone's own reputation is not unblemished, nor was it nurtured in the sacred precincts of an obscure family life, as depicted by Defense Counsel in his moving affidavit.

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According to the affidavit submitted in opposition to this motion by the Assistant District Attorney who has been prosecuting members of the so-called Murder Incorporated, the files of the District Attorney's office and the trial record attest that such vicious characters as Harry,

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"Pittsburgh Phil" Strauss and Martin "Bugsy" Goldstein, both electrocuted for murder a few days ago, also Harry "Happy" Maione and Frank "Dasher" Abbando, both awaiting electrocution and Abe Reles who has confessed his participation in eleven murders, received their schooling in crime from the moving defendant Capone, with whom they allegedly shared their ill-gotten profit of union-sluggings, extortions, shylockings and the murders incidental to their nefarious business. In an application under Sec. 391 Code of Criminal Procedure, the burden is upon the moving defendant to reasonably satisfy the Court that a joint trial would impede the proper administration of justice; and when the sinister reputation of a co-defendant is made the sole basis for the severance, a reasonable anticipation of petitioner's own bad repute and criminal associations are sufficient to defeat the application. Submit order accordingly:

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Dated: June 19, 1941.

225

PETER J. BRANCATO
PETER J. BRANCATO
County Judge, Kings County

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Affidavit of Hyman Barshay, Read in Support of Application for Change of Venue (Buchalter)

**SUPREME COURT OF THE STATE OF
NEW YORK**

COUNTY OF KINGS

227

In the Matter of the Application of

LOUIS BUCHALTER

to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Farvel", LOUIS CAPONE, to another county.

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State of New York {
County of New York { ss.:

HYMAN BARSHAY, being duly sworn, deposes and says:

I am one of the attorneys for the defendant, Louis Buchalter.

This affidavit is made in support of a motion for an order removing the above entitled action from the County Court of Kings County for

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trial in a county outside the City of New York on the ground that a fair and impartial trial cannot be had in Kings County. This application is not intended as a waiver of defendant's contest of the jurisdiction of the State Court under the circumstances and conditions of defendant's incarceration as a Federal prisoner.

A fair and impartial trial of the defendant, Buchalter, cannot be had in Kings County for the manifest reason obvious to anyone who has lived in this City during the past two years, that the defendant has already been tried and convicted in the public mind in consequence of unprecedented newspaper, radio and magazine publicity directed against him. He has been described as society's most dangerous enemy. The attack against him by newspaper, radio and magazine accusations has been continued unremittingly during the past two years even though for the greater part of that period, he has been a prisoner of the Federal Government and shackled by judgments of conviction which require his imprisonment, first in a Federal Penitentiary for a period of fourteen years, and then in the prisons of the State of New York for a consecutive period of incarceration of thirty years.

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One of the explanations for the continued attacks upon the character and reputation of that defendant, even after his imprisonment, is the publicity surrounding the preparation and trial of that series of cases journalistically known as "Murder Inc." In this affidavit, I shall refer to a relatively small number of all of the news-

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paper clippings in which condemnatory references to defendant Buchalter have been made. I shall not attempt to characterize these publications since no compendium description will serve as an adequate substitute for a knowledge of the color and the inflammatory character of the originals.

- 233 On April 7, 1940, there appeared in the Sunday edition of the New York Daily News, a three-page resume of the alleged scope of the activities of a group of professional murders. The article, Exhibit 1, summarizes the activities of this defendant with the statement:

"All in all, O'Dwyer figures, Crime Corp. eliminated seven of the 11 witnesses against Louis (Lepke) Buchalter and Jacob (Gurrah) Shapiro in District Attorney Dewey's investigation of their racket activities."

- 234 The article states that the defendant caused the murder of Joseph Rosen in the following language:

"Joseph Rosen, slain in his Brooklyn candy store in September, 1937. Rosen had been a truck fleet operator, but was driven from business by rackets. The Lepke-Gurrah combination was said to fear his testimony in front of District Attorney Dewey and for that reason contracted to have him killed. Pittsburgh Phil Strauss and Happy Maione were arrested in this case, and soon were freed."

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Much of the article is based upon a reputed interview with the District Attorney of Kings County, as to its contents set forth under the by-line of two reporters, indicate.

The references to the defendant, Buchalter, during the course of the publication of the activities of alleged hired murders have pictured him as the "master-mind". At the same time, the defendant, Buchalter, has been depicted, quite unnecessarily, in other court proceedings and in other jurisdictions within the Greater City of New York, as society's most dreaded enemy. Exhibit 2, annexed hereto, is an excerpt from the New York Journal of February 4, 1941. It quotes an Assistant District Attorney in New York County, during a judicial proceeding, as referring to Buchalter as "the most vicious racketeer who ever preyed on the people of this City."

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Since March, 1940, the District Attorney of Kings County has had in his custody one Abe Reles, who is known generally as an important witness for the prosecution and who has been depicted as an associate and employee of the defendant, Buchalter. On May 15, 1941, the New York Sun published an article about Abe Reles. Reles was then in the custody of the District Attorney. The article is set forth herein as Exhibit 3, annexed to this affidavit. It says in substance that Reles, a prospective witness against the defendant Buchalter in the trial of this indictment, had fallen ill in consequence of worry about the prospect of testifying against the defendant, Buchalter. The sense of the

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article is that Buchalter is so dreaded a criminal that Reles, a man who had committed eleven murders by his own admission, became sick of worry at the prospect of confronting Buchalter in Court.

239

On June 14, 1941, the Journal-American published a story which is annexed hereto as Exhibit 4. It states in substance that one Paul Berger, an associate of the defendant, Buchalter, had acted as a "finger man" in September 13, 1936, murder of Joseph Rosen, and further, that Berger was "squeezing".

During the course of the last several months, the New York Post printed an article, a copy of which is set forth as Exhibit 5. It quotes an "official" as saying that arrested men had committed murder on instruction from the defendant, Buchalter, and that were they induced to talk, "both Lepke and Anastasio will die in the electric chair."

240

On June 5, 1941, the New York Daily News published a story, a copy of which is set forth as Exhibit 6 hereof. In it the District Attorney of Kings County is quoted as having personally accused the defendant, Buchalter, of the murder of Joseph Rosen. In referring to the arrest of Paul Berger, the article said:

"He has always assumed respectability," the prosecutor said, "but we have positive information that he has been connected with Lepke for years in the clothing racket."

On Sept. 12, 1936, O'Dwyer said, Berger

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pointed out Rosen to the assassins Lepke had hired.

Rosen, a former truckman who had threatened to testify against Lepke in the investigation of the flour-trucking racket, was found next day with 21 slugs in his body.

Brought Back for Trial

242

Lepke, who is serving 30 years for extortion, has been brought back from Leavenworth Penitentiary to stand trial for first degree murder as Rosen's technical killer. O'Dwyer did not say whether Berger would be tried at the same time, or later."

There are other recent newspaper statements which state in the baldest terms that this defendant is guilty of the murder of Joseph Rosen. Exhibit 7, annexed hereto, is a photostatic copy of a statement published in the New York Journal on April 7, 1941. Exhibit 8, annexed hereto, is a story published by the New York Sun on April 16, 1941. It states that the District Attorney of Kings County is in possession of strong evidence of the guilt of the defendant, Buchalter, as alleged in the indictment. It says in part:

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"Thus far, Mr. O'Dwyer has uncovered strong evidence that Lepke hired the killers to silence at least two men who he

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feared might talk too much about his affairs when District Attorney Thomas E. Dewey was looking into his rackets several years ago.

245 The former schoolteacher, so the story goes, left pedagogy for the more lucrative field of industrial racketeering in which Lepke was supreme. He became a close friend of Joseph Rosen, the Brooklyn candy store proprietor, who also knew a good deal about Lepke's affairs.

In September, 1936, soon after Rosen had visited Mr. Dewey's office, he was shot to death. The ex-schoolteacher is said to have become so angry at Lepke for having killed his friend that he went to Mr. Dewey's office also. Not long afterward he also was shot down."

246 On January 22nd, 1941, the News published a story of which Exhibit 9 is a photostatic copy. Referring to Workman, whom it accused of the murder of "Dutch Schultz" the article said:

"Workman is now a prisoner in Brooklyn, in default of \$100,000 bail as a material witness in the murder of Joseph Rosen, candy store proprietor who dared to testify against Louis (Lepke) Buchalter, Lepke now serving a federal term in Leavenworth, is one of five men indicted by the Brooklyn Grand Jury for the Rosen murder."

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Exhibit 10 is a copy of a story printed in the News on April 14th, 1940. It also imputes guilt to this defendant for the murder of Joseph Rosen and asserts that this defendant had a motive to cause that murder. The newspapers have not only quoted the authorities as suggesting that the authorities are in possession of proof of the defendant's guilt of the murder of Joseph Rosen and of proof of his motive for desiring to effect the death of Joseph Rosen, but they have also published statements to the effect that the defendant himself had admitted his guilt or was ready so to do if only the Prosecutor would negotiate a bargain with the defendant Buchalter by the terms of which the defendant Buchalter might escape the penalty of death. In other words, the public has been led to believe not only that the District Attorney is convinced of the guilt of the defendant, Buchalter, but beyond that that the defendant Buchalter himself has acknowledged his guilt. 248

Exhibit 11 annexed hereto is a copy of a remarkable story published in the World Telegram on May 16th, 1941 which says that the defendant acknowledged his guilt and was bargaining with the District Attorney through his relatives and attorneys, but that the District Attorney thought that the demand on him by the defendant was "excessive." It says that Buchalter was ready to deliver "a nationally prominent labor leader on a murder charge, a noted public official of New York City on a conspiracy charge, and a close relative of a very high federal office holder • • •" etc. 249

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On May 29th, 1941, the World Telegram published a story to the same effect, a copy of which is annexed hereto and marked Exhibit 12. The story said in part;

- 251 "It was regarded as much more likely, however, that the announcement was to put the screws on Lepke to make him come down in his pride.— This price was reported as freedom from the murder charge and commutation of a 30-to-60 year sentence for racketeering.

Incidentally, political observers speculated on the effect of the announcement on Mr. O'Dwyer's Mayoralty aspirations. Reliable sources reported that Mr. O'Dwyer held a series of conferences with Democratic leaders over the week end, including Brooklyn's Frank V. Kelly and James Roe of Queens. These reports were that the party leaders were pretty lukewarm to Mr. O'Dwyer's ambitions.

- 252 The indictment on which Mr. O'Dwyer says he'll proceed in July charges Lepke and others with the murder of Joseph Rosen, shot in his candy store at 725 Sutter Ave., Brooklyn, Sept. 13, 1936, because, the state charges, he had offered to give information about Lepke's racketeering in the Dewey investigation."

The newspaper columnists as well as reporters have imputed acknowledgment of his guilt to the defendant Buchalter. On May 12th, 1941,

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the Mirror in the Column called "Over the River", which is devoted to Brooklyn Gossip said:

"LEPKE, heavily guarded in a local 'hotel' is pondering whether to 'open up' on three bigshots who have so far escaped the crime roundup . . . Convinced that this will be his only chance to beat the chair, the former No. 1 mobster's family are putting on the pressure."

254

On May 17th, 1941, the Mirror following the lead of the Telegram printed a story, a copy of which is marked Exhibit 14. The headline and opening paragraph state:

"LEPKE REPORTED 'SINGING' TO ESCAPE
CHAIR AS RELES TELLS OF MURDER ORDERED
BY HIM.

By Arnold Prince

255

While Louis (Lepke) Buchalter was reported trading for his life, promising to solve numerous murders and implicate three nationally known figures in assassinations and rackets, the cold-blooded story of one murder actually "ordered" by Lepke and how it was done, was told on the witness stand yesterday by Abe (Kid Twist) Reles."

On the following day the Mirror cited in a story a copy of which is Exhibit 15 hereof:

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"Reles has "definitely promised" to testify, a spokesman for District Attorney O'Dwyer, of Brooklyn, said yesterday. This fact is said to have brought Lepke one step nearer the point where he himself is willing to turn informer, if assured he will be saved from the chair.

257

Among those Lepke is said to be ready to name are "three nationally known figures," allegedly implicated in assassinations and rackets. If a bargain is struck, Lepke's revelations it is predicted, will be the "greatest exposure of organized crime in the United States ever made."

Lepke is known to have conferred with O'Dwyer's aides.

Rosen, like Shuman, was "erased," it is charged, because he informed against Lepke.

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Lepke ordered him slain, according to the State, and Reles is said to be ready to give details as he did in the Shuman killing.

Also reported ready to testify against Lepke is "Allie" Tannenbaum, who drove the car in which Shuman took his last ride."

It is a fact, which the authorities should be very willing to acknowledge as such, that the defendant has not conferred with them, that there has been no discussion of a bargain between the defendant's attorneys or other representatives of the defendant with the District

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Attorney of Kings County or any of his associates or employees. Thus the question of whether reporters whose statements appear under their signature and who purported to quote the District Attorney of Kings County or his associates were unauthorized so to do, is not a problem presented on this application. Omitting that question and proceeding on the assumption that such conversations never took place, that the defendant had not acknowledged his guilt, that he had not attempted to bargain with the District Attorney, he has been misrepresented broadly, generally and widely by every important newspaper in this area as having acknowledged his guilt. The public has been led to believe that the prosecutor believed that the defendant was guilty and on top of that the defendant himself had attempted to negotiate a bargain because of his own acknowledgment of his guilt.

260

It is to be observed that these statements imputing an acknowledgment of guilt to the defendant Buchalter are not restricted to the recent past. They were served up to the public as early as October, 1940.

261

On October 31st, 1940 the Telegram printed a story of which Exhibit 16 is a copy. It said in part:

"But now Lepke faces the electric chair as a result of the smashing of Murder, Inc., by District Attorney William O'Dwyer of Brooklyn.

And so, the World-Telegram is informed, Lepke has told Mr. O'Dwyer that he will

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buy his life by turning state's evidence as the far lesser Abe Reles and small fry of Murder, Inc., already have done.

It is known that Mr. O'Dwyer and Captain Frank C. Bals, who commands detectives working on the Murder, Inc., case, left Brooklyn together on Oct. 22 for Kansas City.

263

And today it was reported that Mr. O'Dwyer made two secret journeys to Leavenworth to talk with Lepke before he and Captain Bals returned to the city last Monday.

Previous Report.

It had been previously reported that Lepke probably would talk if that was the only way he could escape the chair, but today's information is the first definite report from a source of such reliability that Lepke's singing was assured.

264

The argument that convinced Lepke to spill all he knows, to bring to light the deepest secrets of the big shots of the underworld and their alliances with politics, is reported to have been the first degree murder indictment obtained against him by Mr. O'Dwyer.

Mr. O'Dwyer's investigation of Murder, Inc., revealed evidence that Lepke had given 11 murder contracts to this syndicate of retailers of homicide and that

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seven of the murder orders had been executed satisfactorily.

The indictment against Lepke was for one of these crimes—the slaying of Joseph Rosen to shut his mouth so he could not testify against Lepke.

Victim of Extortionists.

Rosen was forced out of the trucking business by Lepke's extortionists. He was reduced to running a small candy shop at 725 Sutter Ave., Brooklyn. That was where he was killed Sept. 13, 1936. He had a subpoena to appear before the Dewey grand jury in his pocket when gunmen walked in and fired 22 bullets into his body.

266

Even this did not shake Lepke's silence, as far as could be learned. But then Assistant District Attorney Louis Aidino obtained important corroborative evidence against Lepke and the five men indicted with him for the Rosen Murder. The nature of the evidence is still a closely guarded secret, but it was important enough to cause Mr. O'Dwyer, to exclaim jubilantly:

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"At last I've got Lepke and Capone on their way to the chair:"

And whatever the evidence was, it is reported, it was enough to convince Lepke that his only chance to escape frying in the hot seat was to sing—and sing loud.

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Charge against Capone.

269 The Capone Mr. O'Dwyer referred to was Louis Capone, one of those indicted with Lepke for the Rosen murder. Capone is now in Raymond St. Jail in Brooklyn. Capone has been described as the liaison officer who took care of murder contracts between Murder, Inc., and Lepke and other top drawer racketeers.

Three of the others indicted with them are still fugitives. They are Emanuel (Mandy) Weiss, Phil (Little Farvel) Cohen and James (Dizzy Jimmy) Ferraco.

The sixth man named in the indictment was Harry (Pittsburgh Phil) Strauss, now in the death house waiting electrocution for the murder of Irving (Puggy) Feinstein. He is one of four notorious members of Murder, Inc., convicted so far in Mr. O'Dwyer's drive against the gang."

270 Exhibit 17 is a story published by the New York Sun on October 31st, 1940.

Exhibit 18 is a reprint from the Mirror of November 1st, 1940. The headline and opening paragraph state:

"REPORT LEPKE WILL 'SING' TO ESCAPE CHAIR

Louis (Lepke) Buchalter was officially reported last night to be ready to buy his life by revealing to District Attorney

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O'Dwyer of Brooklyn all he knows about
 the underworld."

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Mr. O'Dwyer is quoted as follows:

"At last I've got Lepke and Capone on
 their way to the chair," O'Dwyer was re- 272
 ported to have declared before Lepke de-
 cided to talk. No hint was forthcoming
 from O'Dwyer's office last night whether
 he is willing to bargain with the kingpin
 racketeer."

Presumably the District Attorney will be the
 first to concede that he never spoke with the de-
 fendant Buchalter and certainly that he did not
 confer with him as stated in these last referred
 to releases.

The publication of inflammatory and irrespon- 273
 sible statements against this defendant Buchal-
 ter continue, to the very day of the making of
 this application. On July 10th, 1941 the Daily
 Mirror in reporting the progress of Democratic
 Party conferences held for the purpose of se-
 lecting a nominee in the city campaign said:

"One reason given yesterday for
 O'Dwyer's first place position is that he
 "seems to be the only man who could beat
 LaGuardia." The Brooklyn prosecutor is
 expected to strengthen his candidacy fur-
 ther by a successful prosecution of Louis

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(Lepke) Buchalter, due to go on trial Aug. 4 for the murder of Joseph Rosen, ex-member of the Murder Syndicate, "erased" as an informer."

The story in which this statement is contained is Exhibit 19 hereof.

275 Prejudice has been generated by the press against this defendant in the report of the proceedings in Kings County Court on those occasions when the defendant Buchalter was produced for arraignment.

Exhibit 20 hereof is an excerpt from the New York Tribune of May 10th, 1941. It quotes Judge Martin who presided on that occasion as saying of this defendant:

276 "I know this man is a bad man," he said, "a dangerous man, and his record is bad. But how is any man going to confer with his folks for the choice of counsel if ten other men are hanging over him? I don't see any sense to this. Why couldn't just two or three men go in with him? I'm not afraid anybody will take him out of the courtroom. If they try to take him, they'll take me with him. It seems to me to be ridiculous for him to be surrounded as he is. He won't jump out of a window. One man could keep guard there."

Exhibit 21 is the report of the same proceedings as it appeared in the New York Times that same morning. There is a verbatim repetition

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of the language of Judge Martin in the Times account.

The Journal on May 9th, 1941, reported the same events in its own somewhat different journalistic style. Its story is Exhibit 22 hereof.

Incidentally, it may be noted that on May 16th, 1941, when the defendant was again produced before the County Judge, the Assistant District Attorney in addressing the court said among other things:

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"Mr. Turkus: Your Honor, this is a mile stone in law enforcement. After fifteen months of investigation by Judge O'Dwyer we have succeeded in bringing before your Honor at this bar of justice Louis Lepke on a charge of murder in the first degree, the man who pulled the strings."

Mr. Turkus' language was equally unreserved on May 29th, 1941, when addressing Judge Martin. He said in part:

279

"It is about time that issue was joined to the end that a trial date may be fixed. If this Court has no jurisdiction, as I pointed out in the manner in which he took offense, but which would give his client the 'break,' as the expression goes, if he were convicted, and the Court had no jurisdiction, he would cheat, as I said, the electric chair."

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The public has been led to believe that the defendant Buchalter is not only guilty of the crime charged in this indictment, but that he caused the murders of many other people.

Exhibit 22 is a copy of a headline and story in the New York Journal dated April 16th, 1940. The headline and the first paragraph state:

"SHOT DOWN STRANGER IN BROOKLYN

281 Says 'Armorer' Pointed Victim Out To Him

The amazing admission that he shot and killed a man as the appointed executioner for Louis (Lepke) Buchalter without even knowing his victim's last name was revealed today as part of the confession of Abe (Kid Twist) Reles, tattling trigger-man of the Brooklyn cut-rate murder ring."

282 Exhibit 23 is an excerpt from the Tribune of January 3, 1941, in which Mr. Foley, the District Attorney of Bronx County is quoted as being convinced that this Defendant Buchalter had caused the murder of Irving Penn and that that murder had resulted from a confusion of the victim with another intended victim, one Philip Orlofsky.

Exhibit 24 is an excerpt from the Mirror of June 4th, 1940, and asserts that the defendant Buchalter caused the murder in Sullivan County of Hyman Yuran.

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Exhibit 26 is the story in the Times of May 16, 1940, in which the murder of Yuran is attributed to the defendant Buchalter.

On May 16th, 1940, the Post published a statement of which Exhibit 27 is a copy and which included the following:

"The slaying of Mandel, whose body was found in Folsom, N. J., last December, was almost identical to the murder of Yuran, whose body was found yesterday in a shallow lime-lined grave near Loch Sheldrake Inn, at Loch Sheldrake, Sullivan County.

284

Find Gold Wrist Watch

Yuran is believed to have been killed in Lepke's "war of extermination" against witnesses. Bernstein led O'Dwyer and Sullivan County officials immediately to his grave."

285

On May 8th, 1940, the News referred to the then current prosecution for the murder of one Rudnick and said in a story of which Exhibit 28 is a copy:

"Stabbed With Ice Pick

The indictment charges that the trio stabbed Rudnick fifty-four times with an icepick and then crushed his skull with a meat cleaver. The murder, detectives

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claim, was perpetrated on a cash assignment from Louis (Lepke) Buchalter, jailed ex-racket chief in New York."

With respect to Rudnick the Mirror said on April 15th, 1940, of this defendant:

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"The specific charge is the slaying of George Rudnick, a police informer, found stabbed 54 times with an ice pick, in his car on Jefferson Ave. between Central and Evergreen Aves., Brooklyn. In a pocket of Rudnick's coat was a letter, signed by an investigator, thanking Rudnick for "the information you gave me." Authorities assert Louis (Lepke) Buchalter ordered the killing and that the letter was put there on Lepke's order as a threat to other informers."

Exhibit 29 is a copy of that story. The paper quoted Mr. O'Dwyer as follows:

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"Anastasio is said by O'Dwyer to be the man who obtained "killing contracts" for the gang and to have been in charge of the hiding of Lepke when the Government and the State were looking for him."

In reporting developments in the investigation of the death of Irving Penn, the New York Times published a statement on April 15th, 1940, of which Exhibit 30 is a copy. The Times said:

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"Mr. O'Dwyer said that Parks had definitely identified Martin (Buggsy) Goldstein, Abraham (Pretty Boy) Levene and Seymour Magoon as the three men who had stolen a car from a garage at 1 Neptune Avenue, where Parks worked, the night of July 21, 1939. Penn was shot down from the car a few days later as he left his home at 250 East 178th Street, the Bronx, to take a subway downtown to his work as an official of a music publishing house. The explanation of his slaying was that he was mistaken for Philip Orlovsky, a witness against Louis (Lepke) Buchalter in District Attorney Thomas E. Dewey's investigation of Lepke's racket empire. Penn and Orlovsky lived in the same apartment house and were of about the same build.

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In connection with an intensified search for two more alleged members of the Murder ring, Albert Anastasia and Vito Gurino, it was revealed that two of Mr. O'Dwyer's material witnesses had been questioned until the early hours of yesterday at his office. Detectives have been sent to Florida on the trail of the two men, it was said. The two witnesses from whom information was sought were Louis Capone, no relative of the Chicago gangster, and Gurino's wife, Gertrude. Both

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292 *Affidavit of Hyman Barshay, Read in Support of Application for Change of Venue (Buchalter)*

are in jail in default of \$100,000 bail. Capone has been described as the go-between who accepted orders from Lepke and other gangsters for murders they wanted performed and passed the orders on to the actual killers."

293 On April 13th, 1940, the Mirror accused the defendant Buchalter of participation in the murder of Morris Diamond and based the accusation on an affidavit prepared by the office of the District Attorney of Kings County and sworn to by a police officer. Exhibit 31 is a copy of that statement. It says in part:

"Louis (Lepke) Buchalter was directly implicated yesterday in a Brooklyn murder syndicate execution, according to an announcement from District Attorney O'Dwyer's office.

.

294

The affidavit makes the definite charge that Lepke was involved in the Diamond killing."

On April 16th, 1940, the Telegram published an omnibus charge of murder against the defendant Buchalter. Exhibit 32 is a copy of its statement.

On May 20th, 1940, the Mirror reported that it had been informed by a police official that a witness, Albert Tannenbaum, in the custody of

*Affidavit of Hyman Barshay, Read in Support of
Application for Change of Venue (Buchalter)*

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the police, "links Lepke to a 'murder trust.'" Exhibit 33 is a copy of that statement.

On August 6th, 1940, the Mirror accused Buchalter of causing the murder of Sam Feinstein. Exhibit 34 is a copy of that report. It is based on information reputedly obtained from the office of the District Attorney of Kings County.

On August 21st, 1940, the Telegram quoted two witnesses in the custody of the District Attorney of Kings County, the notorious Reles and Tannenbaum as saying that one Schacter had been killed "on Lepke's orders for knowing too much." See Exhibit 35.

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Exhibit 36 is a more inflammatory recital of the same accusation which appeared in the News on August 21st, 1940.

Exhibit 37 is the Telegram's account of the accusation of Reles and Tannenbaum published August 22nd, 1940.

Exhibit 38 is a report from the New York Journal of January 3rd, 1941, in which the District Attorney of Bronx County is quoted as accusing the defendant Buchalter of the murder of Irving Penn. The article proceeds to say:

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"The District Attorney charged that Capone was a liaison man between Lepke and Murder, Inc., and carried the instructions that resulted in the "mistaken" slaying. Foley announced he would ask for transfer of Capone, held in Brooklyn in default of \$100,000 bail, to The Bronx."

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Capone is a defendant in the instant indictment.

Exhibit 39 is the Post version of the same interview with Mr. Foley. It says in part:

299

"Penn, a 42-year-old music publisher, was killed by gangsters in front of his home at 250 E. 178th St., The Bronx, on July 28, 1939. Foley says he had been slain by mistake by men hired by Lepke to murder Benjamin Orlofsky, a witness in District Attorney Dewey's garment racket case against Lepke."

On the same day the Daily News said of Capone:

"Foley will present evidence against Capone, reputed trigger-man for the Louis (Lepke) Buchalter gang, and two unnamed men who are fugitives. Ten witnesses will testify."

300

The article itself is marked Exhibit 40 hereof. On January 30th, 1941, the body of Peter Panto was excavated at Lyndhurst, New Jersey, and that event is reported in a story which is marked Exhibit 41 hereof, published in the New York Times of that day. The composition of the story, which refers to Buchalter as having caused the death of Yuran, whose body was said to have been disposed of in a similar manner, is calculated to give the impression that Buchalter had caused the murder of Panto and

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all other persons who in the opinion of the District Attorney of Kings County had been buried in the same area in New Jersey.

On February 8th, 1941, the Times reported the murder of Benjamin Tannenbaum. It said that Tannenbaum had been on the payroll of Charles Workman, a material witness in the Rosen murder, and then said "Tannenbaum knew a great deal and was about ready to talk". It attributed that statement to a detective. It quoted another investigator as saying "he was most likely killed for having talked to District Attorney Dewey in his investigations of the rackets in which Lepke and his mob played." That article is exhibit 42.

302

On February 8th, 1941, the Mirror said that Mr. O'Dwyer accused Buchalter of the murder of Benjamin Tannenbaum. Its story of that day is marked Exhibit 43 hereof. It says in part;

"Benjamin (Ben. the Boss) Tannenbaum "knew too much about three murders. He was indicted for one; Louis (Lepke) Buchalter for another; and another "pal" of Benny's is said to have fired the shots that "erased" Dutch Schultz.

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So, according to Brooklyn District Attorney, O'Dwyer's office, underworld executioners tracked him down in Featherbed Lane in the Bronx." * * *

Yesterday, a hunt was on for the killers,

304 *Affidavit of Hyman Barshay, Read in Support of
Application for Change of Venue (Buchalter)*

while O'Dwyer's office offered the following explanation:

"We place this execution squarely at the cell doors of Louis (Lepke) Buchalter and Charles (Charlie the Bug) Workman."

Referring to the indictment in this case, representatives of Mr. O'Dwyer are quoted as saying:

305

"Aides to the Brooklyn District Attorney stressed that Lepke is to be brought from Leavenworth prison in June for trial on the charge of ordering the 1936 murder of Joseph Rosen, prospective Dewey witness against Lepke in the fur racket. Workman is behind bars under \$75,000 bail as a witness in the Rosen Killing.

306

But there is a more important allegation against Workman. Authorities in Newark charge he fired the bullets that ended Schultz's career in a tavern there.

"Tannenbaum was in a position to give important testimony concerning these two crimes," was the way O'Dwyer's associates expressed it."

The story based on alleged quotations of aids of Mr. O'Dwyer states that Rosen was killed because he had been a witness against Buchalter and that Benjamin Tannenbaum had been killed

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Application for Change of Venue (Buchalter)*

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on Buchalter's directions because he knew of the murder of Rosen.

On or about May 15th, 1941, there began in the Kings County Court the trial of one Nitzberg for the alleged murder of Al Shuman. That proceeding, widely publicized, became the occasion for the accusation that Buchalter had instigated the murder of Shuman. Exhibit 44 is the statement which appeared in the Sun on May 15th, 1941. Exhibit 45 quotes Mr. Helfand, Assistant to the District Attorney of Kings County as explaining to a reporter of the New York Telegram that he was about to make an accusation in Court against Buchalter. The opening paragraphs of that story are:

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"The slaying of Albert (Plug) Shuman in Brooklyn two and a half years ago was ordered by Louis (Lepke) Buchalter before the latter was picked up by police and sentenced to a long prison term. Julius Helfand, Assistant District Attorney, was to charge today in his opening address to the blue ribbon Kings County Court jury sitting in the murder case against Irving (Knadels) Nitzberg.

309

Mr. Helfand was to declare the state would produce as a witness the woman in whose home the head of Murder, Inc., hid when he mapped out plans for the killing of Shuman, who was found in front of 628 E. 95th St., Brooklyn, in a stolen car on Jan. 9, 1939—two bullets in the back of his head."

310 *Affidavit of Hyman Barshay, Read in Support of Application for Change of Venue (Buchalter)*

Exhibit 46 is the Mirror's version of the same accusation printed on May 16th, 1941.

Exhibit 47 is a report from the Sun of May 16th, 1941.

Exhibit 48 is a repetition of this accusation as it appeared in the Mirror on May 16th, 1941.

Exhibit 49 is the Times report of May 17th, 1941.

311 Exhibit 50 is an excerpt from the News of May 17th, 1941, and Exhibit 51 is an excerpt from that paper of May 20th, 1941.

312 All of these reports state that Buchalter procured the murder of Shuman. It is to be noted that Buchalter was not named in that indictment. The actual Court proceedings were leveled only against Nitzberg, but in the public mind Buchalter was found guilty of having employed Reles and Tannenbaum and Nitzberg to kill Shuman because Shuman was a squealer. There is of course a gap in this journalistic proof. There was no indication that Shuman had been known to Buchalter or that Buchalter had any reason for fearing anything that Shuman might say to authorities. Nevertheless, Buchalter, who was not afforded an opportunity to contest the accusation of the police and of the District Attorney, was tried in the public press for the murder of Shuman.

The newspaper publicity against the defendant Buchalter has not been limited to the accusation that he had been guilty of the instigation of many murders.

Exhibit 51 is a report from the New York

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Application for Change of Venue (Buchalter)*

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Post of February 4th, 1941. Buchalter is there referred to "as the most powerful and vicious racketeer who has preyed upon the public of this city."

Exhibit 52 is a report from the News of May 11th, 1940. Buchalter is referred to as "the brains behind the Brooklyn murder mob."

The News of April 17th, 1940, in a story, a copy of which is Exhibit 53 hereof, quotes Mr. Turkus, Mr. O'Dwyer's assistant, as searching for Max Rubin. It says in part:

314

"If Rubin can be found, Assistant District Attorney Burton B. Turkus, of O'Dwyer's office, hopes that he will be able to link Lepke with several syndicate murders, even more definitely than he is connected at present."

It says that:

"Rubin soured against Lepke when, on orders from the latter, gunmen shot him as he returned to his home at 245 E. Gunhill Road on the night of Oct. 1, 1937. Rubin recovered from his wounds and testified against Lepke in the trial on charges of extortion in the flour and trucking rackets, for which Buchalter was sentenced to 14 years' imprisonment."

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Rubin's whereabouts have never been unknown to the District Attorney of King County. The testimony he has given in other proceedings has

316 *Affidavit of Hyman Barshay, Read in Support of
Application for Change of Venue (Buchalter)*

indicated that he will be a witness for the People in the trial of the instant indictment. Publication of which Exhibit 53 is a copy, is advance notice to the public by the District Attorney's office that Rubin will testify against this defendant and will do so because Rubin believes that the defendant Buchalter attempted to cause the murder of Rubin.

317 Exhibit 54 is a copy of a statement which appeared in the World Telegram of April 18th, 1940, which purports to prove that the notorious Reles was an employee of the defendant Buchalter and by that proof attempts to fasten on Buchalter guilt for all of Reles' crimes.

318 The Exhibits hereto annexed are only a small number of those available in the proof of a proposition that needs no proof. Buchalter has been convicted in the mind of the public of this locality. The prosecutor has been frequently quoted as informing newspaper reporters of his belief in Buchalter's guilt. Witnesses in the custody of the District Attorney have been quoted as acknowledging guilt in the commission of other murders and as having said that they committed those murders upon instructions from Buchalter and while engaged in his employ. There has never been so widespread or devastating an attack upon any defendant. It cannot be believed that this defendant, burdened with these advance notices, can obtain a fair trial in this locality. It is for that reason that this application for a change of venue is made.

There is submitted herewith the affidavit of Benjamin D. Fernbach, a trained investigator,

*Affidavit of Hyman Barshay, Read in Support of
Application for Change of Venue (Buchalter)*

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who, on the 1st, 2nd and 3rd day of July, 1941, interviewed two hundred persons in various localities in the Borough of Brooklyn. One hundred and sixty-four of those persons said that in their opinion Buchalter is guilty of murder. Thirty-four said that they had no opinion, two that he was not guilty. That report, it is submitted, is proof of the devastating effect of the newspaper attacks on the defendant Buchalter. The public has been conditioned to believe that he must be guilty.

320

No doubt, everyone will agree that the defendant like any other should be accorded a fair trial. The prosecution, however, will be giving only lip service to that doctrine if it insists that the trial be held in Kings County. A fair trial cannot be had in Kings County for the reason that the literate section of its population has been taught by every agency of propaganda that this defendant is guilty.

It may be suggested in opposition to this application that it ought be denied because a denial will better serve the convenience of the people's witnesses. But those who cherish and defend the ideal of a fair trial for any defendant, should not permit their loyalty to that doctrine to be overthrown and frustrated by concern over the convenience of witnesses. It has been found convenient in the past for the witnesses in the custody of the District Attorney to be transferred across the continent. If their convenience was not greatly interfered with by their removal to a point 3,000 miles distant from Kings County, they can now be removed a few hundred miles

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Affidavit of Hyman Barshay, Read in Support of Application for Change of Venue (Buchalter)

if that transfer is needed to accord this defendant a fair trial.

323

No doubt many of the quotations attributed to the District Attorney of Kings County and his various aides as set forth in the exhibits annexed to this affidavit, were improper in the sense that they were made without authorization. But the fact is that they were circulated to the public with the apparent approval of the officials quoted. It may be that public officials are without power to refute unauthorized statements. Perhaps no one can efficiently deny statements attributed to him in the press. But a confession of inability to make such successful refutation is not the same thing as a demonstration that because the statements were unauthorized they were therefore not harmful. Their harm is incalculable. They deprive the defendant Buchalter of an opportunity for a fair trial. This application should not only be granted, but in common fairness the prosecutor should join in seeking the relief here requested.

324

No prior application for this or any other similar relief has been made.

This application is made by order to show cause rather than by the giving of the ordinary notice of motion for the reason that deponent desires to make this application as consistently as may be possible with the preparation of the voluminous papers necessary for the presentation of this application and as long before the fourth

*Affidavit of Hyman Barshay, Read in Support of
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day of August, 1941, the date for which this case
is now set for trial, as may be possible.

HYMAN BARSHAY

Sworn to before me this 16th }
day of July, 1941. }

AARON A. JANIS

Notary Public, Kings County

Clk's. No. 151, N. Y. Co. Clk's No. 219

Commission expires March 30, 1943

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327

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Affidavit of Emanuel Buchalter, Read in Support of Application for Change of Venue (Buchalter)

SUPREME COURT OF THE STATE OF
NEW YORK

COUNTY OF KINGS

329

In the Matter of the Application of

LOUIS BUCHALTER

to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Farvel", LOUIS CAPONE, to another county.

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State of New York }
County of New York } ss.:

EMANUEL BUCHALTER, being duly sworn, deposes and says: I am a brother of the defendant, Louis Buchalter.

From time to time, during the past eight months, aides and other representatives of the District Attorney of Kings County have, on their initiative, discussed with me the fact that the defendant has been so named in an indictment pending in Kings County, and have asked me to discuss certain matters with my brother.

*Affidavit of Emanuel Buchalter, Read in Support
of Application for Change of Venue (Buchalter)* 331

One of these conversations was initiated by and held at the instance of an Assistant District Attorney of Kings County. That Assistant District Attorney is, I was informed by him, to try this case for the People of the State of New York.

The aforesaid Assistant District Attorney told me at that particular conversation that I should use whatever influence I could to induce my brother to perform certain services for the District Attorney, because if I did not, then he would proceed with the prosecution and assuredly the defendant would be convicted upon the trial of this case. He said, "I don't need any evidence or witnesses to try this case, all I need is the indictment and a summation." He said in words and in substance that current prejudice existing in this locality against the defendant, Louis Buchalter, is so strong that the mere making of any charge against him would result in his conviction. 332

I submit this affidavit in support of the application made on behalf of the defendant, Louis Buchalter, for a change of venue. 333

EMANUEL BUCHALTER

Sworn to before me this 16th }
day of July, 1941. }

LEE DEUTCH
Com. of Deeds NYC
N. Y. Co. Clerk's #40
Com exp 3-26-42

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**Affidavit of Benjamin D. Fernbach, Read in
Support of Application for Change of
Venue (Buchalter)**

State of New York }
County of New York } ss.:

BENJAMIN D. FERNBACH, being duly sworn, deposes and says:

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I live at 10 Monroe Street, New York City. I was at one time employed as an agent in the Secret Service Division of the United States Treasury Department. For the past twelve years, I have been engaged in the making of investigation. I am presently associated with the firm of Tracy & Seery whose offices are located at 420 Lexington Avenue, New York City. I was admitted to the Bar of the State of New York in 1938. I am a graduate of New York University and New York University Law School.

336

On July 1, 2 and 3, 1941, I interviewed two hundred persons in the Borough of Brooklyn, City of New York. These conversations were carried on in the following neighborhoods of Brooklyn:

1. Bay Ridge
2. Coney Island
3. Vicinity of Long Island Railroad Station and Atlantic Avenue.
4. Prospect Park

*Affidavit of Benjamin D. Ferybach, Read in
Support of Application for Change of Venue
(Buchalter)* 337

5. Flatbush Avenue

6. Church Avenue

I stated to the persons whom I interviewed that I was conducting a publicity survey in an effort to determine how public opinion was formed, based on what the public hears and what the public reads. To each of these persons, I propounded the following questions: 338

1. Will this country enter the war?
2. Is Lepke guilty or not guilty of murder?
3. Will democracy survive this war?

I followed this method in interviewing the first 180 persons whose names and addresses are set forth in the schedule annexed hereto, marked "Exhibit A", and made a part hereof.

In interviewing the twenty persons whose names appear in the schedule annexed hereto, marked "Exhibit B" and made a part hereof, I followed a slightly different method of interrogation. I did not mention the purpose of my inquiry, but in each instance with respect to those twenty persons, I asked without preliminary interrogation the following questions: 339

1. Will this country enter the war?
2. Is Lepke guilty or not guilty of murder?

When this second method of interrogation was employed, the persons whose names appear on

340 *Affidavit of Benjamin D. Fernbach, Read in
Support of Application for Change of Venue
(Buchalter)*

schedule B hereof invariably asked me the reason for the interrogation, and my response was that I was conducting a publicity survey.

341 Every one of the 200 persons whom I interrogated had a quick answer to the second question. Each of these persons indicated doubts as to the first and third questions and showed a desire to engage in a discussion as to the merits of the answers that they entertained. But in answering the second question as to the guilt or innocence of the defendant Buchalter, they entertained no reservations and gave me a categorical answer without hesitation. 164 of the 200 persons thus interviewed said without reservation that in their opinion, the defendant Buchalter was guilty; 34 said that they had no opinion and two said that he was not guilty.

342 The twenty persons whose names comprise the schedule "Exhibit B" hereof, gave me the sources of their opinions and the names of the newspapers which they read. That newspaper information is set forth in that schedule. Of those twenty persons, eighteen entertained the definite opinion that the defendant was guilty. One said that he had no opinion and one said that it was his opinion that the defendant was not guilty.

In the same classification, the persons whose names comprise schedule B hereof, several said that they believed the defendant guilty because of his participation in other murders, and some said that they believed him guilty because he had a record.

*Affidavit of Benjamin D. Fernbach, Read in
Support of Application for Change of Venue
(Buchalter)*

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One of the persons I interviewed replied as follows to the question as to whether Lepke was guilty or not guilty of murder. "After hearing Burton Turkus lecture, how could I think otherwise?"

Immediately after interviewing each of these persons whose names appear in schedule A and B hereof, I made a memorandum of the name and address of the person interviewed. My original memoranda are available.

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BENJAMIN D. FERNBACH

Sworn to before me this 15th }
day of July, 1941. }

LEE DEUTCH
Com of Deeds NYC
N. Y. Co. Clerk's #40
Com exp. 3/26/42

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Exhibit A, Annexed to Affidavit of Benjamin D. Fernbach

Opinion as to guilt or innocence of Buchalter.

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NAME	ADDRESS	OPINION
John Sakal	482 76th Street, B'klyn, N. Y.	Yes
A. Venturelli	2261 60th Street	Yes
Richard Van Jones	7822 Third Avenue	Yes
Chester Flynt	77th St. and 4th Avenue	Yes
Wm. Fitzgerald	339 84th Street	Yes
Fred Lotthamines	7605 Third Avenue	No opinion
John Connelly	309 77th Street	No opinion
Edward Connelly	3608 Quentin Road	Yes
Joseph Sackman	194 Gelston Avenue	No opinion
Charles R. Holahan	450 78th Street	Yes
J. W. Sands	7814 Fourth Avenue	No opinion
Wm. F. Stark	205 71st Street	No opinion
Jerome Carroll	429 78th Street	Yes
W. B. Moore	341 41st Street	No opinion
Peter Fleasen	1243 Putnam Avenue	Yes
Thomas J. Donovan	431 79th Street	Yes
F. Foxwell	79th Street	Yes
H. Seyden	888 Fifth Avenue	Yes
F. S. Marsh	237 79th Street	Yes
Dan Gully	8415 Fourth Avenue	Yes
Joseph F.	82nd St. & Fourth Avenue	Yes
Anthony D'Antonio	8822 Ft. Hamilton Ave.	Yes
O. Sigmond	245 96th Street	No opinion
F. Clement	8415 Fourth Avenue	Yes
W. Clement	8415 Fourth Avenue	No opinion
John Conrick	301-100	Yes
E. Peterson	325 89th Street	Yes
S. Schwartz	8525 Fourth Avenue	No opinion
Wm. Connors	8525 Fourth Avenue	No opinion
B. Ellenson	405 86th Street	Yes
L. Wyler	1474 E. 55th Street	Yes
Dr. Senter	419 86th Street	No opinion
Sam. F. Gumper	8711 Fifth Avenue	Yes
M. Imbriale	1128 69th Street	No opinion

Exhibit A, Annexed to Affidavit of Benjamin D. Fernbach

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E	ADDRESS	OPINION	
Feinstein	459 86th Street	Yes	
s. Mazio	6721 Seventh Avenue	Yes	
ermanser	1361 86th Street	No opinion	
ph Marone	2124 Avenue T	Yes	
Michaels	1435 Bath Avenue	No opinion	
nderson	247 86th Street	No opinion	
ge West	352 85th Street	Yes	
H. Peck	1691 West 6th Street	Yes	
ollenstein	900 Avenue H	Yes	
mith	38 Westminster	No opinion	350
wyer	367 96th Street	Yes	
infer	471 86th Street	No opinion	
wyer	469 86th Street	Yes	
McMahon	310 94th Street	Yes	
enny	402 85th Street	No opinion	
Laff	444 72nd Street	Yes	
itchen	59 Gatling Place	Yes	
ld Nelson	469 86th Street	Yes	
Kelly	339 86th Street	Yes	
. Walsh	465 84th Street	Yes	
k Russo	2467 West 15th Street	Yes	
s Carbone	1839 East 18th Street	Yes	
Verdoliva	2925 West 19th Street	Yes	
. Traae	8602 Ridge Boulevard	Yes	351
. S. Moskowitz	1867 E. 9th Street	Yes	
k DeMarco	529 Surf Avenue	Yes	
as McCormick	289 16th Street	Yes	
Kalish	200 Liberty Avenue	No opinion	
ard Nash	1777 76th Street	Yes	
S. Rosenfeld	1640 Ocean Avenue	Yes	
A. Nicholson	1017 Surf Avenue	Yes	
. Scott	1919 Surf Avenue	Yes	
Roland	1012 Sixth Avenue	Yes	
egel	2258 Ocean Avenue	No opinion	
s Schenk	2824 West 16th Street	Yes	
gers	6408 Gates Avenue	Yes	
blazer	2877 West 20th Street	Yes	

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Exhibit A, Annexed to Affidavit of Benjamin D. Fernbach

	NAME	ADDRESS	OPINION
	Jack Cohen	437 St. Johns Place	No opinion
	S. Rosenfeld	914 Avenue M	Yes
	R. McCreery	217 Prospect Place	No opinion
	L. O'Neill	203 Underhill Avenue	Yes
	W. Van Tassel	1721 East 35th Street	Yes
	Axel Bromark	149 St. Marks Avenue	Yes
	F. Koenig	5 Linden Boulevard	Yes
	J. Shulman	155 Riverdale Avenue	Yes
	Ed. Cahill	482 10th Street	Yes
353	M. Jacobson	3509 Canal Avenue	Yes
	Anonymous	Interviewed in front of Half Moon Hotel	Yes
	L. Goodman	3719 Poplar Avenue	Yes
	S. Russo	570 Pacific Street	Yes
	Fred Lehman	4611 Sixth Avenue	Yes
	George Crisp	271 41st Street	Yes
	J. W. Parks	619 Warren Street	No opinion
	Al. Bova	19 Fourth Avenue	Yes
	A. Sale	19 Fourth Avenue	Yes
	J. Germano	19 Fourth Avenue	Yes
	G. Bova	19 Fourth Avenue	Yes
	Louis Gladstein	532 Pacific Street	Yes
	G. Stillwell	126 Terrace Place	Yes
354	L. Endler	333 Bleeker Street	Yes
	A. Russo	19 Fourth Avenue	Yes
	F. D'Antonio	618 Hendricks Street	Yes
	J. Clarke	486 State Street	Yes
	August Trezza	676 DeGroe Avenue	Yes
	Joe Potsdam	590 Atlantic Avenue	Yes
	Max Baslaw	280 Ocean Parkway	Yes
	S. Zegans	139 Flatbush Avenue	Yes
	Frank Pisani	130 Flatbush Avenue	No opinion
	G. Rosenthal	130 Lott Avenue	Yes
	A. Aurelia	1003 40th Street	Yes
	John DeLeo	130 Flatbush Avenue	Yes
	Percy Visconte	1825 West 3rd Street	Yes

Exhibit A, Annexed to Affidavit of Benjamin D. Fernbach

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NAME	ADDRESS	OPINION	
Gus Resta	1740 44th Street	Yes	
Eli Ross	558 Pennsylvania Avenue	Yes	
Albert Weissman	526 Pennsylvania Avenue	Yes	
Louis Keller	1000 President Street	Yes	
A. Silverstein	74 Fifth Avenue	Yes	
H. Christie	1239 Dean Street	Yes	
Wm. Klein	394 Bergen Street	Yes	
Fred B. Roth	1445 75th Street	Yes	
Chas. J. Kearney	9281 Shore Road	Yes	
Michael Cammaroto	1829 76th Street	Yes	
Morris Feiner	239 Prospect Place	Yes	356
Samuel Feiner	1317 East 14th Street	Yes	
L. Kaplowitz	433 Dean Street	No opinion	
Nathan Cogan	1723 74th Street	No opinion	
H. Anargyros	190 East 21st Street	Yes	
Sam Takis	310 St. John's Place	Yes	
Paul Eliot	234 Bergen Street	Yes	
Theodore Levine	1990 Bedford Avenue	Yes	
John Quist	82 St. Marks Avenue	Yes	
M. Feinstein	693 Crown Street	Yes	
J. Abrams	252 Flatbush Avenue	Yes	
Frank Sheeron	101 Berkeley Place	Yes	
J. Hannon	157 St. Marks Avenue	Yes	
Peter Maggic e	648 83rd Street	Yes	357
Michael Pafundi	763 Franklin Avenue	Yes	
Michael Kravitch	991 President Street	No opinion	
John Martorana	137 Fourth Avenue	Yes	
E. J. Duffy	193 St. John's Place	Yes	
R. Ziv	285 Prospect Place	Yes	
P. Ducato	325 Baltic Street	Yes	
F. Hubbard	25 Stratford Road	Yes	
John Warren	384 Sterling Place	Yes	
J. Walker	918 President Street	Yes	
Michael Russell	670 President Street	Yes	
Dan Ryan	1 Prospect West	Yes	
N. C. Murray	926 President Street	Yes	
Thos. Bellafiori	1757 W. 2nd Street	Yes	

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Exhibit A, Annexed to Affidavit of Benjamin D. Fernbach

	NAME	ADDRESS	OPINION
	John Greies	764 Union Street	Yes
	P. Quinn	349 St. John's Place	No
	J. A. Fives	670 Lincoln Place	No opinion
	Wm. Lane	611 Vanderbilt Avenue	Yes
	L. S. Veck	234 Berkeley Place	Yes
	M. Lyons	511 Lincoln Place	Yes
	J. H. Edsall	199 Park Place	Yes
	Tom Maher	2112 Flatbush Avenue	Yes
	G. Cleva	221 Ninth Avenue	Yes
359	John Dorsey	35 Oakland Street	Yes
	D. Goldstein	122 Van Buren Street	Yes
	Daniel Gerstein	1658 Pitkin Avenue	Yes
	J. Deegan	1041 Bergen Street	Yes
	Arthur Chayes	85 Monroe Street	Yes
	C. Drosopulos	73 Sterling Street	No opinion
	Graham Brown	1031 Nostrand Avenue	No opinion
	Raymond O'Connor	328 E. 26th Street	No opinion
	Chas. Lobine	188 South Second Street	No opinion
	Harry Hoffman	1365 Carroll Street	Yes
	Thos. Earley	528 Flatbush Avenue	Yes
	J. Duane	510 Flatbush Avenue	Yes
	Barnett Rahn	379 East 96th Street	Yes
	J. B. Munsell	2312 Voorhies Avenue	Yes
360	H. Dietz	2121 Westbury Court	Yes
	H. Zeldis	6681 Flatbush Avenue	Yes
	S. Skolnick	181 Clarkson Avenue	No opinion
	Miss S. Roth	311 Powell Street	No opinion
	J. Pecorella	248 East 26th Street	Yes
	Emil Chiappetta	977 Rogers Avenue	Yes
	A. Calabro	83 Second Place	Yes
	S. J. Davidson	2101 Westbury Court	Yes
	F. G. Cameron	105 6th Avenue	Yes
	R. Sica	2723 Voorhies Avenue	Yes
	Emil Purino	1782 Nostrand Avenue	Yes
	V. L. Sica	2723 Voorhies Avenue	Yes
	F. J. Healey	60 Clarkson Avenue	Yes

Exhibit B, Annexed to Affidavit of Benjamin D. Fernbach

361

Name	Address		
Meyer Katz	2229 East 24th Street	Yes	Papers and Radio
J. Philipps	533 Ocean Avenue	Yes	Newspapers P. M.
Milton Goldsmith	1307 East 8th Street	Yes	Newspapers Times and Post
M. Rothman	178 Ocean Parkway	Yes	All Papers
J. Centes	540 Ocean Avenue	Yes	Commentators, papers and radio
J. Pecker	90 East 18th Street	Yes	Papers and radio
Dr. Lamkay	416 Ocean Avenue	Yes Wants all racketeers cleared out	Herald Tribune, World Telegram and radio
M. S.	91 South Street	Yes	Cour on sense and Newspapers
Norman Hilford	395 Ocean Avenue	Yes	Times, Post and News
P. Romano	1470 73rd Street	Yes	Times, News and Radio
E. Karchmar	2105 Church Avenue	Yes Because of his record	News, Post, Telegram and Radio
J. Rodskin	540 Ocean Avenue	Yes	World Telegram, Times, News, and Radio
S. Lamberti	1554 Bath Avenue	No opinion	Times and Radio
F. Bramerlow	48 Sterling Place	Yes Takes no stock	Times, Journal-American, News
E. Weisbjerg	1701 Albermarle Road	No Not guilty of murder but for other crimes	Times, World-Telegram, Sun, News, and Radio
E. Panzella	4118 Fort Hamilton	No opinion	Journal, News, and Radio
Dr. Herman Schneider	962 Flatbush Avenue	Yes Because he knows P. D. men on the case	Newspapers Telegram, News and Radio
Stidle	1638 Coleman Street	Yes	Times, Journal and News and Radio
Elwell	460 East 38th Street	Yes	All papers and Radio
Isaacs	2100 Westbury Court	Yes Gangsters	Telegram, Sun, Times and Radio
L. Strom	597 Lefferts Avenue	Yes	Eagle and Telegram
Seidler	216 East 39th Street	Yes	News and P. M.

36:

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Copy of Indictment

COUNTY COURT

COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
against

365

LOUIS BUCHALTER, alias "Lepke", EMANUEL
 WEISS, alias "Mendy Weiss," HARRY STRAUSS,
 alias "Pittsburgh Phil", JAMES FERACO, PHILIP
 COHEN, alias "Little Farvel", LOUIS CAPONE,
Defendants.

The Grand Jury of the County of Kings, by
 this indictment, accuse the defendants of the
 crime of murder in the first degree, committed
 as follows:

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The defendants on or about September 13,
 1936, in the County of Kings, wilfully, feloniously
 and of malice aforethought, shot and killed
 Joseph Rosen with revolvers.

WILLIAM O'DWYER
 District Attorney

Indictment filed May 28, 1940.

JOHN B. MAIONE,
 Foreman

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

----- X
**In the Matter of the Application of
LOUIS CAPONE**

**to remove the trial of the action of
THE PEOPLE OF THE STATE OF NEW YORK
vs LOUIS BUCHALTER, alias "Lepke",
EMANUEL WEISS, alias "Mandy Weiss",
HARRY STRAUSS, alias "Pittsburgh
Phil", JAMES FERACO, PHILIP COHEN,
alias "Little Farvel", LOUIS CAPONE,
to another county.**

----- X

- - - - - X

Upon the annexed affidavit of LEON FISCHBEIN sworn to the 17th day of July 1941, and the indictment herein duly filed the 28th day of May, 1940, and all the proceedings heretofore had herein, let the District Attorney of Kings County show cause before me or one of the other Justices of this court at the Supreme Court held in and for the County of Kings at the courthouse thereof located at Fulton and Jerusalem Streets, in the Borough of Brooklyn, City of New York, at a Special Term Part I thereof on the 18th day of July, 1941 at 10 o'clock in the morning of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein removing the trial of the indictment herein from the County Court of Kings County to the Supreme Court, held in another county, outside the City of New York, pursuant to Sections 344 and 346 of the Code of Criminal Procedure, and for such other and further relief as may be proper.

SUFFICIENT REASON APPEARING THEREFOR, the District Attorney of Kings County, his assistants and deputies, are hereby stayed from placing the within action on the calendar for trial in this county, pending the hearing

and determination of this motion.

LET service of a copy of the within papers on the District Attorney of Kings County or one of his assistants or deputies, on or before July 17th, 1941, be deemed sufficient.

Dated, New York, July 17, 1941.

Justice of the Supreme Court

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

----- X
In the Matter of the Application of

LOUIS CAPONE

**to remove the trial of the action of
THE PEOPLE OF THE STATE OF NEW YORK
vs. LOUIS BUCHAZZINI, alias "Lepke",
EMANUEL WEISS, alias "Mandy Weiss",
HARRY STRAUSS, alias "Pittsburgh
Phil", JAMES VERACO, PHILIP COHEN
alias "Little Parrot", LOUIS CAPONE
to another county.**

----- X
STATE OF NEW YORK)
: SS:
COUNTY OF KINGS)

----- X
STATE OF NEW YORK)
 : SS:
COUNTY OF KINGS)

LEON FISCHBEIN being duly sworn, deposes
and says:

I am the attorney for LOUIS CAPONE, named
as the defendant in the indictment, a copy of which is hereto
annexed and marked Exhibit "A". 3

That I make this affidavit in support of a
motion for an order removing the trial of the above entitled
action from the County of Kings to any other County outside
of the City of New York, for the reason that a fair and
impartial trial cannot be had in the County of Kings.

That since the present District Attorney
took office, he commenced a campaign against crime and crim-
inals. This campaign unquestionably received far greater
publicity than any campaign that was ever waged in any other
County. The newspapers contained screaming headlines almost
daily and never before in the history of the publishing busi-
ness have the newspapers so consistently publicized the work
and the accomplishments of the District Attorney's office.

That the defendants have been vilified by
the press, their presumptions of innocence have become merely
a myth, and at the present time, instead of a defendant being
protected, so to speak, by the presumptions of innocence,

is my opinion that presumption has been destroyed and in its place we find that each of these defendants are presumptively guilty and will be called upon to establish their innocence.

Unquestionably, it will be urged by opposing counsel that out of the six hundred and fifty names that have been selected as prospective jurors, twelve could be found in this large group, out of which a fair and impartial jury could be composed. But unquestionably, no matter how zealous a person may be to perform his civic duty as a juror, and no matter how honest his answers may be, notwithstanding the fact that he may be able to disregard public opinion and newspapers impressions yet subconsciously, an impression or an opinion cannot be disregarded and that opinion and impression will influence his verdict.

All that I seek at the present time is an 4
opportunity to safeguard the rights of LOUIS CAPOONE, and
certainly the District Attorney of our county desires that
there be no miscarriage of justice in any case and that the right
of a defendant be safeguarded. Certainly the rights of the
People of the State of New York will be amply safeguarded no
matter where this trial is held, but they cannot be safeguarded
in the County of Kings because of the notoriety and publicity
which this case has, up to the present time, received.

I most respectfully submit that we, the reading
public, are only impressed by what we read in newspapers.
We use patent medicines prescribed to us by newspapers only
because we believe what we read. We listen to radio broad-
casts and when the commodity is advertised in that manner,
we purchase said commodity. Millions of dollars a year are
spent to promote sales only because manufacturers know the
value of advertising. All this holds true even in the trial
of an action. Public opinion is created, impressions are
created, and finally bias and prejudice is the result; and
no matter how honest we may be in our belief that we can see

aside these impressions and render a verdict fairly and impartially and solely upon the evidence, that subconscious impression and opinion will naturally influence that verdict.

During the month of June, your deponent made a motion for severance on behalf of his client. This motion was denied but at that time your deponent submitted voluminous excerpts from the New York "Times" publication. These excerpts are now in the files of the County Court of Kings County in the Clerk's office thereof. I am submitting herewith additional clippings from the newspapers, which have been published subsequent to the argument of the motion heretofore mentioned.

If this motion is denied and the defendant is required to stand trial in this county, I believe that the jury will regard my client as presumptively guilty rather than presumptively innocent.

5

If this motion is denied and the defendant is required to stand trial in this county, I believe that the jury will regard my client as presumptively guilty rather than presumptively innocent. 5

That I have read the affidavit of HYNAN BARNES and the affidavit of BENJAMIN D. FERNBACH, and the exhibits annexed to these affidavits which are submitted in support of the motion for change of venue on behalf of the defendant LOUIS BUCHALTER. I verily believe that the facts set forth in these affidavits and from my knowledge of local opinion, that a fair trial cannot be accorded my defendant tried with the defendant Buchalter in this jurisdiction at any time. I am now more convinced than ever before that the defendant LOUIS CAPONE, whom I represent, if compelled to proceed to trial as a co-defendant of the defendant LOUIS BUCHALTER in this county, cannot receive a fair and impartial trial.

That no prior application for this or any similar relief has been made on behalf of the defendant LOUIS CAPONE.

That this application is made by order to show cause rather than the ordinary notice of motion because the trial of this action is scheduled for the 4th day of August; and for the further reason that I am informed by co-counsel that they have made this motion returnable for the 18th day of July 1941.

Sworn to before me this
day of July, 1941

6

**Affidavit of Burton B. Turkus, Read in
Opposition to Application for Change of
Venue (Buchalter)**

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SUPREME COURT OF THE STATE OF
NEW YORK

COUNTY OF KINGS

In the Matter of the Application of

LOUIS BUCHALTER

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to remove the trial of the action of THE PEOPLE
OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER,
alias "Lepke", EMANUEL WEISS, alias "Mendy
Weiss", HARRY STRAUSS, alias "Pittsburgh Phil",
JAMES FERACO, PHILIP COHEN, alias "Little Far-
vel", LOUIS CAPONE, to another county.

State of New York }
County of Kings } ss.:

369

BURTON B. TURKUS, being duly sworn, deposes
and says:

I am an assistant district attorney of the
County of Kings, in charge of the Homicide
Bureau. District Attorney O'Dwyer has as-
signed me and Mr. Klein to prepare and prose-
cute the case against the above named defend-
ants.

I have read the affidavit of Emanuel Buchalter
submitted in support of his brother's motion

370 *Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue (Buchalter)*

for a change of venue. In that affidavit Buchalter's brother asserts that an assistant district attorney, assigned to prosecute the case against Buchalter, made the following statements:

371 "I don't need any evidence or witnesses to try this case, all I need is the indictment and a summation. * * * current prejudice existing in this locality against the defendant, Louis Buchalter, is so strong that the mere making of any charge against him would result in his conviction."

I have been informed by Mr. Klein, who opposed the motion for a change of venue, that upon the argument the accusation was made that it was I who made the above quoted statement to Buchalter's brother.

372 I never, either in words or substance, made any such statements to Buchalter's brother or anybody else. The accusation that I made those statements is false.

BURTON B. TURKUS.

Sworn to before me this 21st }
day of July, 1941. {

JOHN J. LEE, Notary Public,
Kings County. Kings Co. Clerk's
No. 557, Reg. No. 3248.
Commission Expires March 30, 1943.

**Affidavit of Solomon A. Klein, Read in
Opposition to Application for Change of
Venue (Buchalter)**

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**SUPREME COURT OF THE STATE OF
NEW YORK**

COUNTY OF KINGS

In the Matter of the Application of

LOUIS BUCHALTER

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to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Farvel", LOUIS CAPONE, to another county.

State of New York }
County of Kings } ss.:

375

SOLOMON A. KLEIN, being duly sworn, deposes and says:

That he is an assistant district attorney of Kings County assigned to assist in the preparation and presentation of the case against the defendants above named.

This affidavit is submitted in opposition to the motion made by three of the defendants, namely, Louis Buchalter, alias "Lepke", Emanuel Weiss, alias "Mendy Weiss", and Louis

376 *Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)*

Capone, for an order removing the trial of the above entitled action from the County Court of Kings County to the Supreme Court, held in a county outside the City of New York.

The defendant, Philip Cohen, alias "Little Farvel", has not made a similar motion nor has he joined in the present motion.

377 The indictment against all the defendants was filed in the County Court of Kings County on May 28, 1940, charging them with the crime of Murder in the First Degree for the killing of Joseph Rosen, committed in the County of Kings on September 13, 1936.

Your deponent submits that the present motion is completely without merit and is designed solely for the purpose of delay.

378 When the murder indictment was filed, the defendant Buchalter was serving a 14-year term of imprisonment in the United States Penitentiary at Leavenworth, Kansas, under a judgment and sentence of the United States District Court of the Southern District of New York. In accordance with the practice usually followed in such matters, the District Attorney made a request upon the Attorney General of the United States for his consent to the production of Buchalter for trial in Kings County on the aforesaid murder indictment. After extended negotiations, the Attorney General, on April 25, 1941, gave his consent to produce Buchalter for arraignment and trial in Kings County, provided, among other things, that Buchalter should at all times remain in the custody of the United States Marshal of the Eastern District of New

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter) 379

York until his return to Leavenworth after the conclusion of the trial, and provided further that the expenses of Buchalter's transfer and maintenance for the purpose of standing trial in the County of Kings be paid for by the County.

Pursuant to the requirements of the Attorney General, habeas corpus proceedings were duly instituted and Buchalter, at an expense of over \$1,300. was brought from Leavenworth to the Federal Detention Headquarters in New York City. On May 29, 1941, he was arraigned in the County Court, Kings County, where a plea of not guilty was entered on his behalf. 380

Thereafter, on June 9, 1941, Buchalter sued out a writ of habeas corpus in the United States District Court for the Southern District of New York, seeking to be transferred back to Leavenworth. In his petition Buchalter contended, among many other things, that the Attorney General had no right to order his removal to New York City for the purpose of standing trial in Kings County and that because of unfavorable newspaper publicity he could not receive a fair trial. On June 19, 1941, the United States District Court dismissed the writ, an opinion being written by Conger, D. J. 381

The writ having been dismissed, the District Attorney on June 23, 1941, made a motion, pursuant to the provisions of Section 749-aa of the Judiciary Law, for an order directing that the trial be had before a special jury and that the trial date be fixed for July 14, 1941. Upon the argument of the motion, all the defendants con-

382 *Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)*

sented to a trial by a special jury, but objected to the trial date upon the ground that it would not afford them sufficient time to prepare their defense. Accordingly, an order for the empaneling of a special jury was duly entered on July 2, 1941. Said order directed the drawing of a panel of 250 special jurors and fixed August 4, 1941, as the date for the commencement of the trial. After due and timely notice to the defendants, the provisions of the said order were duly complied with on July 8, 1941, the Honorable Harry E. Lewis, Justice of the Supreme Court, presiding at the selection of the special panel.

384 Despite the consent by all the defendants to the selection of a special panel, three of them now seek a change of venue to a county outside the City of New York upon the alleged ground that a fair and impartial trial cannot be had in the City of New York. Buchalter's contention is that during the past two years newspapers, radio and magazines have described him "as society's most dangerous enemy," as the "master mind" of all criminals, and as "a vicious racketeer" who not only directed the murder of Rosen but of many others. He argues that this unfavorable publicity has been such as to lead the public to believe that he is guilty not only of the crime charged in the indictment but that he caused other murders to be committed, and therefore concludes that it would be impossible to find anywhere in the City of New York 12 qualified jurors who could give him a fair and and impartial trial.

The defendant, Cohen, does not join in the mo-

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)

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tion. But the defendants, Weiss and Capone, do join in the motion, their argument being that because of the unfavorable newspaper and radio notoriety received by Buchalter, they, as his co-defendants, would be indirectly affected by the alleged prejudice against Buchalter if they were to be tried together in any county of the City of New York.

All three defendants suggest that the District Attorney should join in the motion. It cannot be gainsaid that the District Attorney in this County fully realizes that, as a quasi-judicial officer, it is his duty, not only to prosecute and bring about the conviction of those guilty of crime, but also to see to it that justice is done. The right of a defendant charged with crime to a fair and impartial trial—no matter how vicious a criminal he may be—is guaranteed to him by the law of the State. Thus, if facts were presented, showing that the defendants in the instant case could not receive a fair trial in the County of Kings, or that they could receive a fairer trial anywhere outside the City of New York, the District Attorney would readily join in the motion for a change of venue.

386

The circumstances at bar, however, do not justify such action. We are here confronted with a case where the defendant, Buchalter, because of his criminal activities for many years, has received widespread notoriety as a gangster-chieftain. This publicity has not commenced, as suggested in Buchalter's moving papers, only two years ago. It has long antedated the present murder indictment. An examination of the New

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Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)

York Times index concerning Buchalter reveals that the notoriety given to his criminal activities dates back to at least the year 1935.

389

Nor has this publicity been limited to the City of New York. It is common knowledge that the metropolitan press circulates throughout the country. Even Buchalter admits that he has also received notoriety through the media of the radio and magazines. In this connection, it is significant to note the contents of an affidavit dated June 5, 1941, and submitted to the County Court of Kings County by the attorney for the co-defendant, Capone, on a motion for a separate trial upon the ground that the publicized criminality of Buchalter would prevent Capone from receiving a fair trial. In that affidavit, Capone's attorney stated:

390

"The condition which your deponent refers to is one that has been created by the newspapers in the metropolitan area and circulated throughout this county, state and nation. * * * The defendant Louis Buchalter, alias Lepke, is a person of national prominence * * *, whose career has been painted from coast to coast as the ruler of a criminal empire."

This is the affidavit of the attorney for one of the co-defendants. It is thus safe to say that there is no reason to believe that the defendants would receive a fairer trial in any county outside the City of New York than would be given to them in Kings County.

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)

391

At this point the Court's attention is called to the affidavit submitted on this motion by Buchalter's brother. He states that an assistant district attorney, whose name he fails to mention, informed him that he was assigned to try this case. He further alleges that the assistant district attorney stated:

"I don't need any evidence or witnesses to try this case, all I need is the indictment and a summation. * * * Current prejudice existing in this locality against the defendant, Louis Buchalter, is so strong that the mere making of any charge against him would result in his conviction."

392

The statements just quoted are false. They were never made. Your deponent and Assistant District Attorney Burton B. Turkus, whose affidavit is annexed hereto, have been the only assistant district attorneys assigned to the preparation and trial of the case against Buchalter. Neither he nor your deponent ever uttered, in words or substance, the statements above quoted. It is apparent from the very wording of the alleged statements that they were concocted to bolster Buchalter's attempt to delay his trial for the murder of Rosen.

393

Of decisive importance is the fact that the argument made on behalf of the defendants completely disregards the law governing the situation. The orderly administration of jus-

394 *Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)*

tice, which requires that a trial be held in the county where the crime was committed, should not be disrupted, unless it affirmatively appears that a fair and impartial trial cannot be had in that county. As was said in the famous case of *People v. Sharp*, where a motion for a change of venue was denied (5 N. Y. Crim. Rep. 155 at p. 158):

395 "The normal condition of things is to try the accused by a jury drawn from the vicinage. Speculations, doubts and possibilities should not cause a deviation from this fundamental rule. Before it is suspended on a particular indictment, defendant must make out a clear and convincing case that by reason of popular passion or prejudice he cannot have a fair trial in the county."

396 The foregoing rule has been consistently followed by our courts (*People v. Sullivan*, Sup. Ct., Kings Co., N. Y. L. J., Dec. 15, 1911, per Kapper, J.; aff'd 150 App. Div. 911; *People v. Hyde*, 75 Misc. Rep., 407-409, per Lehman, J.; aff'd 149 App. Div., 431; *People v. Hines*, 168 Misc. Rep. 453, per Pecora, J.).

Tested by this salutary standard, the defendant's motion papers fall far short of establishing justifiable cause for a change of venue. The contention of the defendants rests upon the speculations and surmises of their counsel and the report of a hired investigator, Benjamin D.

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter) 397

Fernbach. The affidavit of this investigator alleges that in three days he interviewed 200 persons in the Borough of Brooklyn and that he asked them the following questions:

1. Will this country enter the war?
2. Is Lepke guilty or not guilty of murder?
3. Will democracy survive this war?

398

He further reports that of the 200 persons thus questioned 164 stated without reservation that, in their opinion, the defendant Buchalter was guilty, that 34 stated that they had no opinion, and that two said that he was not guilty. This investigator also notes in Exhibit B of the moving papers that the opinions of the persons questioned were based upon reports made by newspapers and the radio.

Your deponent submits that the affidavit of the hired investigator is worthless. It does not present any facts justifying the conclusion that 12 qualified jurors could not be found to give the defendants a fair trial. The question propounded by the investigator to the persons he interviewed was misleading and in no way designed to determine whether the persons interviewed could preside fairly and impartially as jurors in the case. The proper question should have been so worded as to determine whether or not the person interviewed if called as a juror

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400 *Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)*

could decide the merits of the case on the facts alone, uninfluenced by newspaper and radio accounts. This was not done apparently for the reason that it would be difficult to find intelligent citizens who would be unable to preside as fair and impartial jurors without and prejudice because of impressions derived from the newspapers.

401 Indeed, it would be a sad commentary upon the intelligence and integrity of the citizens of Kings County if, out of its population of approximately two and one-half million people, 12 men could not be found among the qualified jurors to give the defendants a fair and impartial trial and decide the case on the evidence, uninfluenced by newspaper stories.

402 Experience teaches us that such is not the situation. In the much publicized case of *People v. Hines*, the pre-trial newspaper accounts, concerning the alleged corrupt and criminal alliance of Hines with the underworld, were much more constant and voluminous than the newspaper items printed with reference to the case at bar. In answer to the contention that because of such publicity Hines could not receive a fair and impartial trial in New York County, Justice Pecora said (168 Misc. Rep. 453, at p. 470):

"Any resident in this county must recognize the fact that it has a most cosmopolitan population, eminently fair and tolerant in its sentiments. That its people are capable of using discrimination in the

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)

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formation and exercise of their individual judgment has often been demonstrated at the polls where they have voted in large majorities against predominating newspaper opinion and exhortation."

Justice Pecora's observation is equally applicable to the citizens of Kings County. In *People v. Sullivan* (Sup. Ct. Kings County) (N. Y. L. J., Dec. 15, 1911, aff'd. (2nd Dept.) 150 App. Div. 911), a motion was made for a change of venue because of prejudicial newspaper publicity. In denying the motion, Judge Kapper wrote:

404

"I find myself unable to conclude that in this large county * * * a jury of fair minded and reasonable men cannot be obtained who will determine the question of the guilt or innocence of the defendant upon the evidence, and upon the evidence alone."

405

Recent experience substantiates Judge Kapper's conclusion. In three highly publicized cases, the jurors in this county, although surrounded by newspaper accounts showing strong feeling against the defendants, have not been swayed thereby and have rendered verdicts of "not guilty," (*People v. George W. Martin*; *People v. Police Lieutenant Behan*; *People v. Alexander Baldwin*).

Our law gives to a defendant accused of murder a wide latitude in examining the qualifications of the individual prospective juror. A

406 *Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)*

defendant is provided with 30 peremptory challenges and an unlimited number of challenges for cause (Code Crim. Pro., Sec. 373). There are thus ample means to select from the various walks of life fair-minded, intelligent and unbiased judges of the facts, who can discern and can divorce themselves from the impressions or opinions received through the medium of newspapers. So thoroughly is this recognized that
 407 it is provided in Section 376 of the Code of Criminal Procedure that

“the previous expression or formation of an opinion or impression in reference to the guilt or innocence of the defendant, or a present opinion or impression in reference thereto, is not a sufficient ground of challenge for actual bias, to any person otherwise legally qualified, if he declares on oath, that he believes that such opinion
 408 or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence and the court is satisfied that he does not entertain such a present opinion or impression as would influence his verdict.”

Furthermore, where the subject matter of the indictment or the issue to be tried “has been so widely commented upon” in the press “that an ordinary jury cannot without delay and difficulty be obtained to try such issue”, the defendant or the district attorney may apply for a

Affidavit of Solomon A. Klein, Read in Opposition to Application for Change of Venue (Buchalter)

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special jury (Judiciary Law, section 749-aa, subd. 4). This was done in the instant case and consented to by all the defendants. Subdivision 2 of the Statute cited affords ample protection against the selection of any juror who may be biased because of newspaper comments. It provides that:

“No person shall be selected as such special juror * * * who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression * * *.”

410

In this connection, the opinion of Clarke, P. J., in *People v. Brindell* (1st Dept.) (194 App. Div. 776), is quite apt here. Judge Clarke stated at page 781:

“If newspaper articles furnished ground for removal, no defendant could ever be tried in New York County for a spectacular crime. If the defendant's fears in the case at bar are justified, we would not know to what county his trial should be transferred, as the metropolitan press circulates through the entire state. The busy residents of New York City are too much interested in their own affairs to be so impregnated with casual news accounts as to render them unfit for jury duty. The jury list is large, the special

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412 *Affidavit of Solomon A. Klein, Read in Opposi-*
tion to Application for Change of
Venue (Buchalter)

jurors are selected with care. We are satisfied from past experience that there will be little difficulty in securing in New York County a fair and impartial jury."

413 In concluding this affidavit, it is to be remembered that the removal of the trial to a distant community outside the City of New York would entail great delay and great expense. It would necessitate the transfer of practically half of the District Attorney's staff. It would also endanger the safety of the People's witnesses, who are being kept under constant guard by police officers. This protection of witnesses has been made necessary by virtue of the fact that Buchalter and his hirelings have been responsible for the murder of many prospective witnesses against him. Indeed, Rosen, for whose murder Buchalter is presently charged, was killed because he was a prospective witness against him.

414 For the foregoing reasons deponent respectfully prays that the motion for a change of venue should be denied.

SOLOMON A. KLEIN.

Sworn to before me this 21st }
day of July, 1941. (

**JOHN J. LEE, Notary Public,
Kings County, Kings Co. Clerk's
No. 557, Reg. No. 3248.
Commission expires March 30, 1943.**

**Answering Affidavit of Hyman Barshay, Read
in Support of Application for Change of
Venue (Buchalter)**

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**SUPREME COURT OF THE STATE OF
NEW YORK**

COUNTY OF KINGS

In the Matter of the Application of

LOUIS BUCHALTER

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to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK VS. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Farvel", LOUIS CAPONE, to another county.

State of New York }
County of Kings } ss.:

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HYMAN BARSHAY, being duly sworn, deposes and says:

I submit this affidavit in answer to the affidavit of Solomon A. Klein, sworn to the 21st day of July, 1941.

Mr. Klein states (page 2) that this application for a change of venue is "completely without merit and is designed solely for the purpose of delay." He says also that the newspaper notoriety with which the defendant Buchalter is burdened has been so sweeping and has covered

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Support of Application for Change of Venue
(Buchalter)*

so great a period of time, that it is not to be assumed that a fairer trial could be had outside the City of New York than can be obtained within it.

419 This application is not made for the purpose of delay. It is true that on behalf of the defendant, Buchalter, the jurisdiction of the County Court to try him has been contested. That contest involves serious questions of law which, however, have not been raised in the State Court because they are properly justiciable only in the Federal Court. The District Attorney can be assured and is hereby assured that there is no connection between this application for a change of venue and any effort on the part of the defendant, Buchalter, to delay the trial of this action. There is no demonstration by the District Attorney that there is any such connection. An Assistant District Attorney partakes of the quasi judicial status of his superior. (See page 4, affidavit of Mr. Klein)

420 Mr. Klein's affidavit is somewhat lacking in the quasi judicial aspects of his office when he states that an application is made solely for the purpose of delay and has no proof to support that statement.

Reference is made to the fact that no objection was interposed to the application by the District Attorney for the trial of this action by a special jury. When that application was made, the District Attorney also sought an order placing the case on the Calendar for trial on July 14, 1941. That aspect of the motion only was contested and the County Judge who

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heard the application saw merit in the opposition of the defendants and set the case down for trial on August 4, 1941, three weeks after the date sought by the District Attorney. It is not said in so many words, but Mr. Klein seeks to create the impression that the failure to contest that aspect of the motion which sought a special jury, in some undefined manner constituted a waiver of the right to make this application. The argument is not defined because it could not be logically articulated. The defendants were not required to contest the application for a special jury and their failure so to do has nothing to do with the merits of this application.

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The burden in the opposing affidavit is that there is a failure of scientific demonstration, that it is impossible for the defendant Buchalter to obtain a fair trial in Kings County. But it has never been required that a defendant make such demonstration of mathematical formulae or scientific propositions. It is the purpose of the law to assure each defendant a fair trial. (*People v. Diamond*, 36 Misc. 71, at pages 75-79) All that need be shown is that there is reason to apprehend that a fair trial cannot be had in what the cases refer to as the "vicinage." If that be shown, then discretion ought be exercised by the granting of the application for a change of venue. It is not enough, as the answering affidavit seeks to convey, to justify a denial of the application, merely to show that possibly a fair trial can be obtained. In *People v. McLaughlin*, 150 N. Y. 365, at page 379, the Court of Appeals said,

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“That jurors are sometimes prejudiced, and courts may be unconsciously biased to the injury of one of the parties, must be admitted. Prejudice is often an insuperable barrier to the fair and impartial administration of the law. Its influence is subtle, insidious and often unconsciously warps the judgment and blinds the intelligence of those surrounded by its atmosphere. But its presence can usually be discovered only from the circumstances and conditions which produce it. In discussing this question in another case it was said: ‘But there cannot well be any serious misapprehension as to the existence of facts (showing prejudice against the defendant), especially where they are of a public nature. The principal question is as to the inferences to be drawn from them. It (the trial) is the very thing which the law seeks to avoid, when it is seen that the party may, and probably will be drawn into a trial by a jury, who, under an influence of which they may themselves be hardly conscious—an influence which, perhaps, no human sagacity can detect—may pronounce a verdict against him, and conclude his rights forever. Above all, would it be dangerous to require that he should risk his trial by a panel selected from a community already sought to be influenced by the course of the press: that very panel being personally appealed to by the opposite party’s

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own press, or one put in motion by him, or by some other person.' (People v. Long Island R. R. Co., 4 Parker's Crim. R. 602, 604; People v. Webb, 1 Hill, 179.)"

In *People v. Nathan*, 139 Misc. 345, the Court said:

"The right thus given to defendants is a substantial one, and follows the fundamental principle of criminal jurisprudence that every person accused of a crime is entitled to a fair and impartial trial before an unprejudiced jury. Obviously, it is not within the realm of possibility to determine, with mathematical accuracy, the existence of prejudice or the extent thereof. It has been held, therefore, that the true test is not the mere possibility of selecting an apparently unprejudiced jury, but whether from the circumstances of a particular case, there is a strong probability that bias exists in the community where the indictments are pending. (People v. Webb, 1 Hill, 179; People v. McLaughlin, 150 N. Y. 365.) Each case must stand on its own merits, and in these cases it must be determined from the surrounding circumstances whether there is probable reason to believe that a fair and impartial trial cannot be had in the county where the venue is laid.

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It is not reasonable to reject the infer-

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ence that these circumstances in combination must have left an impression on the public mind. Neither the action of the press, the proceedings of the district attorney, nor the actions of those concerned with political issues can be justifiably criticised. Each within its proper sphere performed a legitimate public function, but the fact remains that this peculiar combination of circumstances created an atmosphere which is not conducive to a fair and impartial trial. The average taxpayer, always sensitive about matters of taxation, may well have concluded that the frauds charged were a direct assault on his pocketbook, nor would assurances, as to a recovery of money lost, necessarily remove such impression. The evidence revealed by the committee was certainly not calculated to soothe the feelings of the irate taxpayer, and he may well have been convinced from such evidence that those named were in fact guilty. A voluminous mass of form affidavits has been submitted by the defendants to establish their contentions in this respect, and the district attorney has countered by submitting an equally voluminous mass of affidavits to prove the contrary. Proof through the very uncertain medium of affidavits is invariably unsatisfactory, but in these cases the circumstances themselves lend color to the defendants' claim and are heavily in their favor.

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For reasons less grave than those enumerated the places of trial of actions, merely civil in their nature, have been changed (*Barnes v. Roosevelt*, 164 App. Div. 540; *Niven v. Stoddard*, 225 id. 705). In his opinion in the case of *People v. McLaughlin* (*supra*) Judge Martin said: 'That jurors are some times prejudiced, and courts may be unconsciously biased to the injury of one of the parties, must be admitted. Prejudice is often an insuperable barrier to the fair and impartial administration of the law. Its influence is subtle, insidious and often unconsciously warps the judgment and blinds the intelligence of those surrounded by its atmosphere. But its presence can usually be discovered only from the circumstances and conditions which produce it. In discussing this question in another case it was said: "But there cannot well be any serious misapprehension as to the existence of facts (showing prejudice against the defendant), especially where they are of a public nature. The principal question is as to the inference to be drawn from them. It (the trial) is the very thing which the law seeks to avoid, when it is seen that the party may, and probably will be drawn into a trial by a jury, who, under an influence of which they may themselves be hardly conscious—an influence which, perhaps, no human sagacity can detect—may

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pronounce a verdict against him, and conclude his rights forever."

To the same effect is *People v. Becker*, 135 Misc. 471.

437 Where it is established that the community is "practically a unit" in concluding that the defendant is guilty, a proper exercise of discretion dictates the granting of the application for a change of venue. So, in *People v. Hyde*, 149 App. Div. 131, at page 134, the Appellate Division of the First Department said:

438 "Whether or not the application should be granted is to be determined by the wise exercise of judicial discretion, and each case must be decided upon its own facts. Of course there can be no certainty established in regard to such a future event. It is enough if the court can find that in all human probability such a condition exists. In *People v. Georger* (109 App. Div. 111) Mr. Presiding Justice McLennan said: 'Without going into detail as to the character of the opinions expressed, all to the effect that the defendant was culpable and wholly responsible for the difficulties in which the bank was involved, it is sufficient to say that by the quotations from the public press contained in the record, from the opinions of parties interested, assembled to consider the situation, from the expressions of citizens who met and casually discussed the matter, it would seem

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that the community was practically a unit in concluding that the defendant had been guilty of serious wrongdoing and which resulted in or caused the failure of the bank.'

If this court was satisfied that a fair and impartial jury could not be obtained in the county of New York to try the defendant upon the indictment found against him, 'that the community was practically a unit in concluding' him guilty, it would be its duty—and it would not hesitate—to reverse the order appealed from and grant the motion for a change of venue."

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Public hatred generated by newspaper comment is in and of itself a sufficient reason to conclude that a fair trial cannot be had in a particular locality and that, therefore, the trial should be removed to another county. As to that Mr. Justice Giegerich said in *People v. Diamond*, 36 Misc. 75:

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"The fairness of a trial should be above and beyond suspicion, and no court should allow a trial by a jury of a vicinage the general opinion and belief of which, upon the matters involved in such a trial, either party has industriously, through newspapers, sought to form. To do this would simply encourage parties, in advance of actual trial, to create prejudice and bias, in the hope of benefit to follow from a legal investigation before men, some of whom,

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at least, might have obtained their views and judgments of a cause elsewhere than in the court room.' (Moulton v. Beecher, 52 How. Pr. 18.)

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The possibility of selecting a jury in the county which would be apparently unprejudiced, is not the test of such an application as this, for where there is a general sentiment adverse to the party on trial, and a strong probability that bias exists throughout the community, he should not be compelled to take the risk of coming before a jury whose members, or some of whom, are influenced by adverse sentiments which may be undiscovered in the course of examination, or which, indeed, may be not fully appreciated by the jurors themselves. (See *People v. Webb*, 1 Hill, 179.)

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Although support may be found in certain of the earlier decisions in this State for the proposition that before such an application as this should be granted the impossibility of obtaining a jury should be demonstrated by an actual attempt and failure to obtain one (*Bowman v. Ely*, 2 Wend. 250; *Messenger v. Holmes*, 12 id. 203), the later and better decisions repudiate it. (*People v. Webb*, supra; *People v. Long Island R. R. Co.*, 16 How. Pr. 106; *Budge v. Northam*, 20 id. 248; *People v. McLaughlin*, 150 N. Y. 365, 380.)

Indeed, the obtaining of a jury apparently impartial, would seem to be the very

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danger against which this provision of the statute is intended to shield a defendant. Against obvious prejudice, such as can be made to appear upon the record, courts can protect; but this statute is designed to protect against that other prejudice which is the more dangerous because unconscious and not capable of discovery. As was said by Cowen, J., sitting with Nelson, Ch. J., in *Peor'e v. Webb*, supra, at p. 184: 'To make such an experiment essential, would seem to be quite dangerous. It (the trial) is the very thing which the law seeks to avoid, when it is seen that the party may, and probably will be drawn into a trial by a jury, who, under an influence of which they may themselves be hardly conscious—an influence which perhaps no human sagacity can detect—may pronounce a verdict against him, and conclude his rights forever. Above all, would it be dangerous to require that he should risk his trial by a panel selected from a community already sought to be influenced by the course of the press; that very panel being personally appealed to by the opposite party's own press, or one put in motion by him, or by some other person.' This language was quoted with approval by the Court of Appeals in *People v. McLaughlin* (150 N. Y. 365, 379), in which case the court further said in this point: 'That jurors are sometimes prejudiced, and courts may be unconsciously biased to

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the injury of one of the parties, must be admitted. Prejudice is often an insuperable barrier to the fair and impartial administration of the law. Its influence is subtle, insidious and often unconsciously warps the judgment and blinds the intelligence of those surrounded by its atmosphere. But its presence can usually be discovered only from the circumstances and conditions which produce it.' "

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In the same case Mr. Justice Giegerich said with respect to highly publicized issues:

"There is one other consideration on this branch of the case which I am led to advert to by the following pertinent observation made by Strong, J., in *People v. Baker*, (3 Park Cr. 181, 195): 'During an experience of many years I do not remember a verdict in a criminal case, in opposition to a strong public sentiment previously entertained and generally known. If that should be erroneous, and it sometimes is, it will probably lead to an unjust verdict. If there should be a divided sentiment, it would result in a disagreement, and the trial thus prove abortive.' "

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In the *Diamond* case, the same argument was made as is made here to the effect that because certain persons were acquitted by jury, it was to be assumed that everyone else could expect a fair trial in the county. Mr. Justice Giegerich

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(36 Misc. 76) indicates the fallacy of that argument. There is no connection between the public furor against this defendant, Buchalter, and other persons, who, presumed to have been innocent at the time they were indicted, were found to be innocent by a jury. The learned Assistant District Attorney states in his affidavit (page 7) that the affidavit of Fernbach submitted in support of this motion is worthless. *People v. Hyde*, 149 App. Div. 131, demonstrates the contrary. 452

The suggestion that under Section 376 of the Code of Criminal Procedure, a prospective juror is competent if he can state under oath that he can lay aside antecedent opinion and that, therefore, it is to be assumed that twelve such persons can be assembled in the Kings County Court to give the defendant, Buchalter, a fair trial, is fallacious. It misses the point of the remarks of the Court in *People v. McLaughlin*, 150 N. Y. at 379. The mere expression of a supposed ability to lay aside a judgment already formed, does not eliminate that judgment from the mind of the juror. 453

In opposing this application, the learned Assistant District Attorney says:

"This protection of witnesses has been made necessary by virtue of the fact that Buchalter and his hirelings have been responsible for the murder of many prospective witnesses against him. Indeed, Rosen, for whose murder Buchalter is presently

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charged, was killed because he was a prospective witness against him."

Of a less inflammatory statement, it was said in *People v. Lucas*, 131 Misc. 664, at page 668:

455 "In addition to what has been said, there appears to be an attitude on the part of the assistant district attorney, who has charge of the case, which is hardly in keeping with the calm and deliberate administration of the law which every defendant is entitled to in a criminal case. In one of the affidavits filed he has gone entirely beyond the charge made against the defendant, and has presented statements connecting the defendant with the commission of another crime, the presentation of which could have been made with no other purpose than to prejudice the court against the defendant on this motion.

456 In another affidavit he charges the defendant, or persons on his behalf, with attempting to intimidate witnesses, and charged the defendant's counsel with having made an effort to pay certain moneys to witnesses if they would decline to appear and testify against the defendant. The court is satisfied that no improper methods were used by defendant's counsel in obtaining a statement from the complaining witness and that his conduct of the case has been ethical in all respects despite criminations and recriminations on

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both sides. The zeal of advocacy may be carried beyond the bounds of proper professional conduct that is to be expected of a prosecuting officer. And, finally, he asks to have the case sent to another justice on the ground that the justice before whom the motion is made has prejudged the case. The motion came on before a justice who had out of a sense of duty, passed upon the various motions, in this acrimonious prosecution, as the attorney saw fit to bring them on at Special Term, and, because of his connection with the case, he had been charged with having prejudged the motion to change the place of trial. These matters are referred to as showing the animus of the assistant district attorney and as bearing upon the question whether a fair and impartial trial can be had in Monroe county. The only fair and reasonable conclusion upon the evidence before me, based upon the decisions of the courts on similar motions, is that, in the interests of justice, the defendant should be tried in a county where he will not be met by the atmosphere that would surround him in a trial in the county of Monroe. (People v. Long Island R. R. Co., 4 Park. Cr. 602; People v. Diamond, 36 Misc. 71; People v. Georger, 109 App. Div. 111; People v. Jackson, 114 id. 397; People v. Ryan, 123 Misc. 450; Barnes v. Roosevelt, 164 App. Div. 540; People v. McLaughlin, 150 N. Y. 365.)"

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There are less important errors in Mr. Klein's affidavit. He states that he and Mr. Turkus are the only persons assigned in the preparation of the trial of this case. At the same time, he says that the case should not be removed because to do so would require the transfer of one half the staff of the District Attorney's office. Both statements cannot be true. Neither is important if a demonstration has been made that there is reason to apprehend that a fair trial cannot be accorded the defendant in Kings County at this time.

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It is respectfully submitted that a fair trial cannot be accorded that defendant in this County and that that proposition has been demonstrated so far as it is possible to demonstrate it short of an experimental trial. An experimental trial is not a needed requirement to the making of this application. *People v. Ryan*, 123 Misc. 450.

HYMAN BARSHAY

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Sworn to before me this 24th }
day of July, 1941. }

IRIS MORRISON, Comm. of Deeds
New York City. Comm. exp. Feb. 11, 1943.

**Affidavit of Jesse Climenko, Read in Support
of Application for Change of Venue
(Buchalter)**

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**SUPREME COURT OF THE STATE OF
NEW YORK**

COUNTY OF KINGS

In the Matter of the Application of

LOUIS BUCHALTER

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to remove the trial of the action of THE PEOPLE
OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER,
alias "Lepke"; EMANUEL WEISS, alias "Mendy
Weiss", HARRY STRAUSS, alias "Pittsburgh Phil",
JAMES FERACO, PHILIP COHEN, alias "Little Far-
vel", LOUIS CAPONE, to another county.

State of New York }
County of New York } ss.:

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JESSE CLIMENKO, being duly sworn, deposes
and says: I am a member of the firm of Weg-
man & Climenko, attorneys for the defendant,
Louis Buchalter.

I submit this affidavit in support of an appli-
cation for the removal of the trial of this action
from the County Court of Kings County, to the
Supreme Court held in another county outside
the City of New York.

There is annexed to this affidavit a series of
articles published by the Daily Mirror. This

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application is occasioned by the publication of that series of articles.

The Daily Mirror is a newspaper having a circulation which is counted in hundreds of thousands.

467 For several days prior to August 25, 1941, the Mirror published a special announcement to the effect that beginning on August 25, 1941, it would publish a series of articles for the exclusive attention of its Brooklyn readers, devoted to the defendant Louis Buchalter. On August 25, 1941, and daily thereafter, it proceeded to publish the articles which are annexed as an exhibit hereto.

These publications were made against the following background:

The indictment herein charges the defendants with the murder of one Joseph Rosen on September 13, 1936.

468 The indictment was filed on May 28, 1940. The defendant Buchalter was then and continues now to be a prisoner in the custody of the Attorney General of the United States. In May, 1941, upon the request of the District Attorney of Kings County, he was transferred from the Federal Penitentiary at Leavenworth, Kansas, to the Federal House of Detention in New York City. He was caused to appear in the County Court of Kings County and instructed to plead to the indictment. Upon advise of counsel he remained mute and a plea of not guilty was entered on his behalf at the direction of the Court. He continues to contest the jurisdiction

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of that Court; and this application is not to be construed as a waiver of that contest.

Subsequently, upon the request of the District Attorney of Kings County, the trial of this action was set for July 14, 1941, and later adjourned by a Judge of the County Court of Kings County to August 4, 1941.

The District Attorney's application for the empanelment of a special jury was granted prior to August 4, 1941, and was unopposed by the defendant Buchalter.

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On August 4, 1941, the action was called for trial at a Part of the County Court of Kings County before Judge Taylor. Of the 256 talesmen comprising the special panel, about 230 were present in the Court on that morning.

The Court devoted itself on August 4, 1941, to listening to excuses of those members of the panel who did not want to serve because service would interfere with their own vacation schedule or the vacations of business associates. About 120 such excuses were offered.

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Presumably, approximately 100 talesmen were ready to serve at that time if accepted as jurors.

Nevertheless, on August 5, 1941, the Court announced that the trial would be adjourned because in the opinion of the Court it was impossible then to obtain a jury to hear the case. No defendant requested that adjournment.

Counsel for this defendant requested the Court at that time to proceed with the case then or to adjourn the trial until a day in November after the municipal elections.

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The Court adjourned the trial to September 15, 1941, and said in substance that it could not adjourn the case to a date subsequent to the municipal elections because to do so would be a tacit admission that the administration of justice might conceivably be subordinated to the exigencies of a political campaign and, of course, that concept was impossible.

473 Counsel for this defendant excepted to the Court's ruling.

During the course of colloquy which proceeded between the Court and counsel for the various defendants, the attorney for the defendant, Weiss, the Hon. Alfred Talley, urged the Court to adjourn the trial until the end of the election campaign for the reason that a trial held during the midst of the campaign would of necessity be held at a time when a jury might be influenced against the defendants and in favor of the prosecution, and that for the simple reason that the District Attorney of Kings County was the democratic nominee for Mayor. Counsel for this defendant joined in that request. In urging that contention, Mr. Talley submitted to the Court a copy of the New York Journal American of that date, which included one of a series of articles purporting to constitute a factual biographical record of the democratic nominee. There will be submitted upon the argument of this motion as an exhibit to be appended to these papers, photostatic copies of all of the articles making up the series thus published by the Journal American.

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In rejecting Mr. Talley's suggestion that the mere publication of these articles might prejudice a jury against the defense and in favor of the prosecution, the Court said in substance, and there is no pretense here that the statement is given verbatim, although this is the true substance of it, that the series of articles then being currently published by the Journal American would have been completed long before the middle of September and, therefore, counsel need not be concerned about them. 476

Since that time and beginning on August 25, 1941, the Mirror has begun and now continues publication of those articles devoted to the alleged career of the defendant, Buchalter, of which complaint is now made. This series is not completed as of the time of the dictation of this affidavit. The text of the articles indicates that the series will continue perhaps to the date now set for the trial of this action. The articles are obviously intended to reach a climax and that climax will be a discussion of the murder alleged to have been committed according to the allegations of this indictment. Upon the argument of this motion, all of the articles constituting the series and then actually published will be submitted to the Court. There is no other way of bringing this matter to the Court's attention because there is no way of knowing when the series will end, and if this application were suspended until the completion of the series, probably it could not be made until after September 15, 1941, and if it were done in that 477

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way, the District Attorney would undoubtedly assert that it was tardily made.

479 These articles are prejudicial and inflammatory. They completely destroy the possibility that a fair trial can be accorded the defendant Buchalter. They are of a type of journalism which defies adequate characterization. They assert that the defendant has been guilty of twenty-seven murders and they assure the public of his guilt at the same time that they depict the past inability of public officials to prosecute him. They vest the defendant Buchalter with leadership over a notorious group of murderers. They describe him as one who profited to the extent of countless millions of dollars from criminal activities. By subtle effective statements, they assume his guilt of the murder charged by this indictment.

480 I do not pretend by this reference to the contents of these articles to have done justice in describing the degree of their prejudicial and inflammatory character. I assert that it is impossible because they are without parallel. I assume that I am under no obligation to characterize them since they are submitted as an exhibit to the Court and since I believe that the Court itself will gauge the expected harm which must come to the defense from their publication.

Thus it appears that the assurance of the County Court that the prejudicial publications of the Journal American would be forgotten by September 15, 1941, was unfortunately unfounded. The Journal American and the New York Mirror are newspaper properties of the same owner.

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The offense against the administration of public justice which was initiated by the glorification of the prosecution is continued by the unprecedented denunciation of a defendant under circumstances which indicate that the denunciation will be continued until the opening day of the trial as set by the County Court. It is frequently said in opposition to these applications when they centre about the publication of inflammatory matter, that it would be idle to grant them and for the reason that the circulation of the metropolitan newspapers is not limited to the City of New York. Irrespective of the value of that argument, the fact is that frequently metropolitan newspapers are distributed beyond the confines of New York City, but that contention cannot be made here. These articles are published in an edition which is printed exclusively for the residents of Kings County. You cannot buy a copy of the Mirror which carries this series unless you buy it in Brooklyn. They are set forth on a page which is devoted only to the residents of Brooklyn. The rest of the page is made up of the printing of a gossip column devoted exclusively to the activities, political and amatory, of residents of Kings County. That column printed under the name of Edward Zeltner has, as I am informed, a substantial number of readers. Mr. Zeltner was first and still is a sports reporter and there are many citizens of Brooklyn who read his gossip column. So, the Mirror's special dish for residents of Brooklyn is made up of the Zeltner column and the series of which complaint is made by this motion. 482

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Presumably, in a sterner jurisdiction, the publication of these articles would expose the publisher and the author to summary contempt proceedings. In England, no one would dare publish anything like it. In Massachusetts so far as I know, they could not be published without the certainty that the publisher and author would be dealt with by the imposition of summary punishment. But such is the condition of the law in the State of New York that the defendant has no relief from it except by an application for a change of venue. The County Court cannot interfere with the publication of these articles. No one can in advance order the suppression of the publication of any matter unless perhaps it be an incitement against the government during the period of war. The County Court cannot issue a warrant in a contempt proceeding because these articles are not the reports of a current proceeding.

485 For these reasons, the only relief which any Court can give the defendant is that of ordering the venue of the action to be transferred to a Court, outside of the City of New York. The reasons for granting that application will be found in the articles themselves.

486 This application is made by order to show cause for the reason that it is impossible to give the ordinary notice of motion in view of the fact that the articles published by The Mirror were being currently published and counsel desired, of necessity, to suspend the making of the application until the nature of the articles might be discerned as they were published.

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No prior application for this or any similar relief has been made except that a prior application for a change of venue was made on behalf of the defendant, Buchalter, at a Special Term, Part 1, of this Court held before Mr. Justice Daly. That application was made upon the ground that other publications had resulted in general hostility against that defendant on the part of the residents of King County. That application was made prior to the publication of the series of articles now complained of. There is annexed hereto a copy of the order made by Mr. Justice Daly denying that application and also a copy of the opinion of Mr. Justice Daly on that application.

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JESSE CLIMENKO

Sworn to before me this 8th }
day of September, 1941. }

JULIAN BUCHBINDER

Attorney and Counsellor at Law

60 Wall Street

Residing in Bronx County

Bronx Co. Clk's. No. 15 Reg. No. B-43-18

Certificate filed in

N. Y. Co. Clk's. No. 73, Reg. No. 3-B-908

Kings Co. Clk's. No. 7, Reg. No. 3035

Commission Expires March 30, 1943.

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Copy of Indictment

COUNTY COURT

COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,
against

491

LOUIS BUCHALTER, alias "Lepke", EMANUEL
 WEISS, alias "Mendy Weiss," HARRY STRAUSS,
 alias "Pittsburgh Phil", JAMES FERACO, PHILIP
 COHEN, alias "Little Farvel", LOUIS CAPONE,
Defendants.

The Grand Jury of the County of Kings, by
 this indictment, accuse the defendants of the
 crime of murder in the first degree, committed
 as follows:

492

The defendants on or about September 13,
 1936, in the County of Kings, wilfully, feloniously
 and of malice aforethought, shot and killed
 Joseph Rosen with revolvers.

WILLIAM O'DWYER
 District Attorney

Indictment filed May 28, 1940.

JOHN B. MAIONE,
 Foreman

**Opinion of Mr. Justice Daly Denying
Change of Venue (Buchalter)**

"The defendant moves for a change of venue to a county outside of the City of New York for the trial of an indictment for murder in the first degree filed against him by the Grand Jury of Kings County on May 28, 1940, upon the ground that a fair and impartial trial cannot be obtained in this county or in this city.

"Upon a motion by the District Attorney for an order directing the trial before a special jury on July 14, 1941, the moving defendant, as well as the defendants, Weiss and Capone (who seek similar relief in separate motions), consented to a special jury and objected solely to the trial date inasmuch as it would not permit sufficient time to prepare. An order was duly entered on July 2, 1941, directing the drawing of a panel of 250 special jurors and fixing August 4, 1941, as the date of the commencement of the trial. Upon due notice, said order was complied with on July 8, 1941, by the selection of a special panel.

"After a careful consideration of the application herein, the court is of the opinion that there is no merit thereto. The papers do not establish by convincing proof that the defendant, by reason of prejudice or passion, cannot obtain a fair trial in this county. Great stress is placed by the defendant upon the notoriety given him by newspapers and radio. It is evident, however, that such notoriety was not confined to the metropolitan press, which circulates throughout the country, and certainly was not limited to radio listeners in the City and State

496 *Opinion of Mr. Justice Daly Denying Change of
Venue (Buchalter)*

of New York. 'If newspaper articles furnish ground for removal, no defendant could ever be tried * * * for a spectacular crime,' in the county of indictment. (*People v. Brindell*, 194 App. Div. 776.)

497 "The affidavit of the investigator to the effect that in a period of 3 days, he interviewed 200 persons in Kings County is of little probative force. Three questions were propounded, two of them wholly unrelated to the defendant. The third was as follows: 'Is Lepke guilty or not guilty of murder?' It is claimed that one hundred sixty-four persons stated that he was guilty; two that he was not; and thirty-four had no opinion one way or the other. Even if a poll of this character could properly be considered upon this application, the Court is of the opinion that the question propounded was misleading and did not reflect whether the persons interviewed could preside fairly and impartially as jurors in the case who must reach their conclusion on facts established on the witness stand alone, uninfluenced by impressions derived from newspapers or other sources. It is inconceivable that in a cosmopolitan community such as Kings County, with a population of over two million people, a jury cannot be found, qualified to fairly and impartially try the defendant on the evidence.

498

"Under all the circumstances, therefore, the application is in all respects denied."

PETER M. DALY,
J. S. C.

**Order of Mr. Justice Daly Denying
Change of Venue (Buchalter)**

At a Special Term, Part I, of the
Supreme Court of the State of
New York, held in and for the
County of Kings, at the Court
House thereof, Borough of
Brooklyn, City of New York,
on the 1 day of August, 1941.

Present: Hon. PETER M. DALY, Justice.

500

In the Matter of the Application of

LOUIS BUCHALTER

to remove the trial of the action of THE PEOPLE
OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER,
alias "Lepke", EMANUEL WEISS, alias "Mendy
Weiss", HARRY STRAUSS, alias "Pittsburgh Phil",
JAMES FERACO, PHILIP COHEN, alias "Little Far-
vel", LOUIS CAPONE, to another county.

501

The above named defendant, Louis Buchalter,
having applied to this court for an order grant-
ing a change of venue of the trial of this action,
and the said application having duly come on to
be heard on the 18th day of July, 1941,

New on reading and filing the order to show
cause, issued out of this court on the 16th day
of July, 1941, the affidavits of Hyman Barshay,
duly verified the 16th day of July, 1941, and the

502 *Order of Mr. Justice Daly Denying Change of
Venue (Buchalter)*

503 24th day of July, 1941; the affidavit of Emanuel Buchalter, duly verified the 16th day of July, 1941; the affidavit of Benjamin D. Fernbach, duly verified the 15th day of July, 1941; submitted in support of said order to show cause; the affidavits of Solomon A. Klein and Burton B. Tarkus, both duly verified the 21st day of July, 1941, submitted in opposition to said application, and upon all other papers and proceedings had herein, and after hearing Hyman Barshay, Esq., of counsel for the defendant, in support of said application, and Solomon A. Klein, assistant district attorney, in opposition thereto, and upon filing the opinion of the court and due deliberation having been had, it is on motion of William O'Dwyer, District Attorney of Kings County,

ORDERED that the said motion be and the same hereby is in all respects denied.

504 Enter:

PETER M. DALY
J. S. C.

Granted Aug. 1, 1941.

FRANCIS J. SINNOTT
Clerk

4

At a Special Term, Part I, of the
Supreme Court of the State of New York,
held in and for the County of Kings,
at the Court House thereof, Borough of
Brooklyn, City of New York, on the 1st
day of August, 1941.

PRESENT:

HON. PETER M. DALY

Justice.

----- X

In the Matter of the application of

LOUIS CAPONE

**to remove the trial of the action of THE
PEOPLE OF THE STATE OF NEW YORK vs. LOUIS
BUCHALTER, alias "Lepke", EMANUEL WEISS,
alias "Mandy Weiss" HARRY STRAUSS, alias
"Pittsburgh Phil", JAMES PERACO, PHILIP
COHEN, alias "Little Parvel", LOUIS CAPONE
to another county.**

----- X

The above named defendant, Louis Capone, having applied to this court for an order granting a change of venue of the trial of this action, and the said application having duly come on to be heard on the 18th day of July, 1941,

Now, on reading and filing the order to show cause, issued out of this court on the 17th day of July, 1941; the affidavit of Leon Fischbein, duly verified the 17th day of July, 1941, and a copy of the indictment, No. 23255, submitted in support of the said order to show cause; the affidavits of Solomon A. Klein and Barton Turkus, both duly verified the 21st day of July, 1941, submitted in opposition to said application, and upon all other papers and proceedings had herein, and after hearing Leon Fischbein, Esq., of counsel for the defendant, Capone, in support of said application, and Solomon A. Klein, assistant district attorney, in

opposition thereto, and upon filing the opinion of the court and due deliberation having been had, it is on motion of William O'Dwyer, District Attorney of Kings County.

ORDERED that the said motion be and the same hereby is in all respects denied.

ENTER

Peter M. Daly

Granted

August 1st, 1941.
Francis J. Sinnott
Clerk

Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue (Buchalter)

505

**SUPREME COURT OF THE STATE OF
NEW YORK**

COUNTY OF KINGS

In the Matter of the Application of

LOUIS BUCHALTER

506

to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Farvel", LOUIS CAPONE, to another county.

State of New York }
County of Kings } ss.:

507

BURTON B. TURKUS, being duly sworn, deposes and says:

That he is Chief of the Homicide Bureau of the District Attorney's office of Kings County, assigned to the preparation and presentation of the case against the defendants above named.

This affidavit is submitted in opposition to the motion made by defendant, Louis Buchalter, alias "Lepke", for an order removing the trial of the above entitled action from the County Court of

508 *Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue (Buchalter)*

Kings County to the Supreme Court, held in a county outside the City of New York.

The defendants, Emanuel Weiss, Philip Cohen and Louis Capone, have not made a similar motion, nor have they joined in the present motion.

The indictment against all the defendants was filed in the County Court of Kings County on May 28, 1940, charging them with the crime of Murder in the First Degree for the killing of Joseph Rosen, committed in the County of Kings on September 13, 1936.

509 Your deponent submits that the present motion to transfer the trial beyond the limits of the City of New York is without merit. This is the second time that the defendant, Buchalter, seeks a change of venue. On July 18, 1941, a similar motion was made in the Supreme Court which was heard by Justice Daly. On that motion Buchalter's contention was that during the past two years newspapers, radio and magazines have described him "as society's most dangerous enemy," as the "master mind" of all criminals, and as a "vicious racketeer" who not only directed the murder of Rosen but of many others. Buchalter contended that this unfavorable publicity was such as to lead the public to believe that he was guilty not only of the crime charged in the indictment, but that he caused other murders to be committed. He, therefore, contended that it would be impossible to find anywhere in the City of New York, 12 qualified jurors who could give him a fair and impartial trial.

510

Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue
(Buchalter)

511

In an attempt to support his contentions, there was submitted to Justice Daly voluminous exhibits, consisting of photostatic copies of news items appearing in various newspapers. Justice Daly denied the motion and wrote an opinion, a copy of which is annexed to the moving papers. In that opinion Justice Daly said, in part, the following:

512

"After a careful consideration of the application herein, the court is of the opinion that there is no merit thereto. The papers do not establish by convincing proof that the defendant, by reason of prejudice or passion, cannot obtain a fair trial in this county. Great stress is placed by the defendant upon the notoriety given him by newspapers and radio. It is evident, however, that such notoriety was not confined to the metropolitan press, which circulates throughout the country, and certainly was not limited to radio listeners in the City and State of New York. "If newspaper articles furnish the ground for removal, no defendant could ever be tried
• • • for a spectacular crime," in the county of indictment. (People v. Brindell, 194 App. Div. 776) • • •"

513

The present motion is in substance an attempt to re-argue the motion made before Justice Daly. The defendant, Buchalter, does not present any additional proof to justify a different decision. He merely submits additional newspaper arti-

514 *Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue (Buchalter)*

cles of recent origin which, he claims, are of such a nature as to preclude the selection of a fair and impartial jury in Kings County. One series of articles submitted as an exhibit appeared in the New York Journal-American describing the life of William O'Dwyer, District Attorney of Kings County. These articles, Buchalter contends, have tended to "glorify" the District Attorney and, therefore, would operate to Buchalter's detriment. The other series of articles submitted as an exhibit have been appearing in the New York Daily Mirror (Brooklyn section). A reading of these articles shows that they consist of nothing more than a restatement of what has already been said about Buchalter in many newspapers for at least the past five years.

515 An examination of the New York Times index concerning Buchalter reveals that the notoriety given to his criminal activities dates back to at least the year 1935. Nor has this publicity been limited to the City of New York. It is common knowledge that the metropolitan press circulates throughout the country. Buchalter has also received notoriety through the media of the radio and magazines. His notoriety has been state and nation wide. There is thus no basis for asserting that Buchalter can receive a fairer trial outside the limits of the City of New York than he can receive in Kings County.

516 Furthermore, our law gives the defendant accused of murder a wide latitude in examining the qualifications of prospective jurors. A defendant is provided with 30 peremptory chal-

Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue
(Buchalter)

517

allenges and an unlimited number of challenges for cause. (Code of Crim. Proc., Sec. 773.)

Where the subject matter of the indictment or the issue to be tried "has been widely commented upon" in the press so "that an ordinary jury cannot without delay and difficulty be obtained to try such issue," the defendant or the District Attorney may apply for a special jury (Judiciary Law, Sec. 749-aa, Subd. 4). This was done in the instant case and consented to by all the defendants. Subdivision 2 of the statute cited affords ample protection against the selection of any juror who may be biased because of newspaper comments. It provides that:

518

"No person shall be selected as such special juror * * * who doubts his ability to lay aside an opinion or impression formed from newspaper reading or otherwise, or to render an impartial verdict upon the evidence, uninfluenced by any such opinion or impression * * *."

519

There are thus ample means to select from the various walks of life fairminded, intelligent and unbiased judges of the facts, who can divorce themselves from impressions or opinions received through the medium of newspapers and render judgment on the evidence, uninfluenced by newspaper accounts. As was said by Justice Daly in denying the prior motion:

"It is inconceivable that in a cosmopolitan community such as Kings County,

520 *Affidavit of Burton B. Turkus, Read in Opposition to Application for Change of Venue*
(Buchalter)

with a population of over two million people, a jury cannot be found qualified to fairly and impartially try the defendant on the evidence."

For the foregoing reasons, your deponent respectfully submits that the motion for a change of venue should be denied.

521

BURTON B. TURKUS

Sworn to before me this 10th }
day of September, 1941. }

ROBERT J. BURT

ROBERT J. BURT

Notary Public, Kings County
Kings County Clks. No. 770, Reg. No. 3319
Commission Expires March 30, 1943.

522

**Order of Mr. Justice Brennan Denying
Change of Venue (Buchalter)**

523

At a Special Term, Part 1 of the Supreme Court, held in and for the County of Kings, at the Court House thereof, Fulton and Joralemon Streets, Borough of Brooklyn, City of New York, on the 22 day of September, 1941.

Present: Hon. PHILIP A. BRENNAN, Justice.

524

In the Matter of the Application of

LOUIS BUCHALTER

to remove the trial of the action of THE PEOPLE OF THE STATE OF NEW YORK vs. LOUIS BUCHALTER, alias "Lepke", EMANUEL WEISS, alias "Mendy Weiss", HARRY STRAUSS, alias "Pittsburgh Phil", JAMES FERACO, PHILIP COHEN, alias "Little Favel", LOUIS CAPONE, to another county.

525

The above named defendant, Louis Buchalter, having applied to this court for an order removing the trial of the indictment herein from the County Court of Kings County to the Supreme Court, held in another county outside of the City of New York, and the said application having duly come on to be heard on the 10th day of September, 1941,

526 *Order of Mr. Justice Brennan Denying Change
of Venue (Buchalter)*

527 Now on reading and filing the order to show
cause issued out of this court on the 8th day
of September, 1941; the affidavit of Jesse Cli-
menko, Esq., duly sworn to the 8th day of Sep-
tember, 1941, submitted in support of said appli-
cation; the affidavit of Burton B. Turkus, duly
sworn to the 10th day of September, 1941, sub-
mitted in opposition thereto, and upon all other
papers and proceedings had herein, and after
hearing Jesse Climenko, Esq. attorney for the
defendant in support of said application, and
Burton B. Turkus, assistant district attorney, in
opposition thereto, and due deliberation having
been had, and upon filing the opinion of the
court, it is on the motion of William O'Dwyer,
District Attorney of Kings County,

ORDERED that the said application be and the
same hereby is in all respects denied.

Enter:

528

P. A. BRENNAN
J. S. C.

Granted Sep. 22, 1941

FRANCIS J. SINNOTT
Clerk

**Memorandum Opinion of Taylor, C. J.,
Adjourning Trial**

529

This jury situation is unprecedented. It is practically a run out. The reason for it may be reluctance to give protracted service during the hottest month of the year. There is merit in that position. To arbitrarily combat it would smack of coercion and would tend to undermine that quality of jury service which is essential for a fair trial of this case. The court will grant the motion for a continuance of the trial until after Labor Day, but it cannot go over until after election as that would subordinate the trial to the exigencies of a political campaign, which is unthinkable. No prejudice can come from trying the case before election, because sensibly no juror will be influenced by his political views in deciding the question of guilt or innocence in a capital case.

530

"The trial is continued until September 15, 1941. The August term of Part 2 of this court is continued for that and for all other purposes of the trial.

"Decision is reserved on all pending applications for excuse from jury service. All members of the jury panel are directed to return on September 15, 1941, in this part at 10 a.m. The prisoners are remanded. This action has no relation to the personal convenience of the court, as the court will remain in session for the trial of other cases throughout the summer.

531

"The jurors are urged to withdraw their objections and to serve willingly on the date fixed. Should a new panel be desired all counsel for the defense should agree."

532

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 4th. day
of August 1941.

Present: Hon. FRANKLIN TAYLOR. County Judge.

533

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER alias LEPKE.
EMANUEL WEISS alias MENDY WEISS.
PHILIP COHEN. alias LITTLE FARVEL.
LOUIS CAPONE.
JAMES FERACO NOT PRESENT.

Indict No: 23855
Murder First Degree.
Special Panel of Jurors.

534

APPEARANCES. PEOPLE &C

BURTON B. TURKUS. SOL A. KLEIN.
LOUIS JOSEPHS.

APPEARANCES FOR DEFENDANTS.

JESSE CLIMENKO. BERTRAM WEGMAN. HY-
MAN BARSHAY. for Buchalter.

Minutes of Trial

535

JAMES I. CUFF. ALFRED J. TALLEY. M. M.
KRIENDLER. for Weiss.

LEON FISHBEIN. EMANUEL ROSENBERG.
SIDNEY ROSENTHAL. for Capone.

SAUL PRICE. for Cohen.

THOMAS F. DARCY. JULIA MCGOWEN.
Stenographers.

The District Attorney moves this indictment
for trial.

Preliminary motions by defense counsel.

536

The Court so orders, the following named
juror Woolsey W. Conlon 711 E. 24th St. was
called and placed in box not examined or sworn.
all application for excuse to be passed upon
August 5th. 1941.

Trial continued August 5th. 1941.

A true extract from the minutes

FRANCIS J. SINNOTT.

Clerk.

537

538

Minutes of Trial

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 5th day of August 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

539

Trial continued from August 4th, 1941, all appearances noted. Juror Woolsey W. Conlon, called, not examined or sworn.

Motion by District Attorney and all counsel

Case adjourned until September 15th, 1941. Jurors ordered to return at that date.

The August term of Part 2. of this Court, is continued for that and for all other purposes of this trial.

A true extract from the minutes.

FRANCIS J. SINNOTT.

Clerk.

540

Minutes of Trial

541

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 15th. day
of September 1941.

Trial continued from August 5th. 1941 all ap-
pearances noted. the juror heretofore drawn but
unsworn. appears and answers to the call of his
name. Motion by Saul Price for a separate trial
as to defendant Philip Cohen. motion consented
to by Mr. Turkus. motion granted. remanded.
motion by Mr. Turkus for a severance as to de-
fendant James Feraco defendant not present.
motion granted.

542

Examination of jurors proceed.

Trial continued September 16th. 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 16th. day
of September 1941.

543

Trial continued from September 15th. 1941.
all appearances noted.

Examination of jurors continued.

Motion by Mr. Rosenthal for an adjournment
until September 18th. 1941. because said counsel
is ill.

Motion granted.

544

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 18th. day
of September 1941.

Trial continued from September 16th. 1941.
All appearances noted.

Examination of jurors continued.

545

Trial continued September 19th. 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 19th. day
of September 1941.

Trial continued from September 18th, 1941.
All appearances noted.

546

Examination of jurors continued.

Morris Leibowitz. accepted tentatively

Examination of jurors continue.

Trial continued September 24th. 1941

Minutes of Trial

547

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 24th. day
of September 1941.

Trial continued from September 19th. 1941.
All appearances noted.

Examination of jurors continued.

Charles E. Stevens. accepted tentatively not
sworn. 548

Examination of jurors continue.

Trial continued September 25th. 1941

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 25th. day
of September 1941.

549

Trial continued from September 24th. 1941.
All appearances noted.

Trial of jurors continued.

Trial continued September 26th, 1941.

550

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 26th. day
of September 1941.

Trial continued from September 25th. 1941.
All appearances noted.

Examination of jurors continued.

551

Trial continued September 29th. 1941

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 29th day
of September 1941.

Trial continued from September 26th, 1941.
All appearances noted.

552

Examination of jurors continued.

Benjamin Protter, accepted tentatively not
sworn.

Examination of jurors continued.

Trial continued September 30th, 1941.

Minutes of Trial

553

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 30th. day
of September 1941.

Trial continued from September 29th, 1941.
All appearances noted.

Examination of jurors continued, tentatively
jurors appear and answer to their names.

554

Examination of jurors continued.

Trial continued October 2nd, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 2nd day
of October 1941.

Trial continued from September 30th, 1941.
All appearances noted.

555

Examination of jurors continued.

Charles T. Prentice, accepted tentatively not
sworn.

Examination of jurors continued.

Trial continued October 3rd, 1941.

556

Minutes of Trial

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 3rd. day of October 1941.

Trial continued from October 2nd, 1941. All appearances noted.

Examination of jurors continued.

557

Trial continued October 6th, 1941.

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 6th. day of October 1941.

Present: Hon. FRANKLIN TAYLOR, Country Judge.

558

Trial continued from October 3rd, 1941. Defendants personally present.

All appearances noted. The jurors placed in the box but not sworn.

Charles A. Murphy, placed in box as tentative juror. No. 3.

Examination of jurors continues.

Jurors admonished. Trial continued October 7th, 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

Minutes of Trial

559

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 7th. day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

Trial continued from October 6th. 1941. All

appearances noted.

560

3 tentative jurors appear and answer to their
names.

Examination of jurors continued.

No. 4 David M. Day accepted by both sides as
tentative juror not sworn.

Examination of jurors continued.

No. 5 Henry T. Gill accepted by both sides as
tentative juror not sworn.

Examination of jurors continued.

Trial continued tomorrow morning at 10
o'clock jury admonished.

561

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

562

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 8th day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

563

Trial continued from October 7th. 1941. All
appearances noted.

Tentatively accepted jurors appear and an-
swer to their names. Examination of jurors
continued.

No 6. James A. Cummings. Tentatively accepted.

No 7 George B. Hall Tentatively accepted

No 8 Philip Stroker Tentatively accepted.

Trial continued to October 9th. 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

564

Minutes of Trial

565

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 9th day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

Trial continued from October 8th. 1941. All
appearances noted.

Tentatively accepted jurors all appear and an-
swer to their names.

566

Examination of jurors continued.

No 9. Harold T. Cress. Tentatively accepted.

Original panel exhausted Court orders addi-
tional panel to report October 14th. 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 10th day
of October 1941.

567

Present: Hon. FRANKLIN TAYLOR County Judge.

Trial continued from October 9th. 1941. All
appearances noted.

Tentatively jurors accepted all appear and an-
swer to their names.

Examination of jurors continued.

Panel exhausted.

Trial continued October 14th. 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk

568

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 14th. day
of October 1941.

Additional panel of special jurors present.

Trial continued from October 10th, 1941.

All appearances noted. Tentatively jurors all
appear and answer to their names.

569

Arthur G. Jaeger, 3545 89th St., Jackson
Heights, Queens Co. U. S. Marshall. Sworn.

Examination of jurors continued.

No. 10, John D. Butt. Tentatively accepted.

Trial adjourned until October 15th, 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

570

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 15th. day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

Trial continued from October 14th, 1941. All
appearances noted. The tentatively accepted
jurors all appear and answer to their names.

Examination of jurors continued.

Trial continued October 16th, 1941.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

Minutes of Trial

571

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 16th. day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

Trial continued from October 15th, 1941. All
appearances noted. The tentatively accepted
jurors all appear and answer to their names.

572

Examination of jurors continued.

No. 11, James L. Edghill tentatively accepted.
Juror No. 8, Phillip Strober excused by con-
sent of all counsel.

No. 11, John J. Rorke, tentatively accepted.
Examination of jurors continued.

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

573

574

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 17th. day
of October 1941.

Present: HON. FRANKLIN TAYLOR, County Judge.

575

Trial continued from October 16th, 1941. All
appearances noted. All tentatively. Jurors ap-
pear and answer to their names.

No. 9, John D. Butt, juror No. 9, on consent
of all counsel.

No. 11, William C. Links tentatively accepted.

The following jurors were duly drawn, em-
panelled, accepted and sworn and now constitute
the jury to decide the issue.

576

- | | |
|------------------------|---------------------|
| 1 Charles E. Stevens. | 7 George B. Hall. |
| 2 Chester T. Prentice. | 8 Harold S. Cress. |
| 3 Charles A. Murphy. | 9 James R. Edghill. |
| 4 David M. Day. | 10 John J. Rorke. |
| 5 Henry T. Gill. | 11 Wm. C. Links. |
| 6 James B. Cummings. | 12 John E. Coleman. |

Examination of jurors continued.

Carl M. Gilt, alternate juror.

George K. Ormond, alternate juror.

Trial continued October 20th, 1941.

Jury and alternates to be furnished with lodg-
ings and refreshments.

A true extract from the minutes.

FRANCIS J. SINNOTT,

Clerk.

Minutes of Trial

577

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 20th. day
of October 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

Trial continued from October 17th, 1941.

All appearances noted. The jury heretofore
duly sworn all appear and answer to their names.

578

Opening to the jury on behalf of the People
&c.

Counsel for all defendants waive opening to
the jury.

Peoples witnesses. Sworn.

Estelle Rosen. 345 Wyona St. Sworn.

Harry Regenbonger. 451 Miller Av. Sworn.

Louis Stamler. 720 Sutter Av. Sworn.

Gieglielmo Cappadora 17733 M. C. S. Sworn.

Dr. Edward Marten. 152 Lenox Rd. Sworn.

Trial adjourned until October 21st, 1941.

579

A true extract from the minutes.

FRANCIS J. SINNOTT,
Clerk.

580

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 21st day
of October 1941.

Trial continued from October 20, 1941.

All appearances noted. The jury heretofore
duly sworn, all appear and answer to their
names.

581

Peoples Witnesses:

Dr. M. Edward Marten. Recalled.

Frederick W. Walsh Shield 809 123 Squad
Ballistic Bureau. Sworn.

George V. Dumont Shield 1631 Homicide
Squad Sworn.

Emil Schaefer Shield 1163 Ballistic Bureau
Sworn.

Herman Schiesser 123-19 85 Ave., Richmond
Hill, L. I. Sworn.

Hirsh Merlis 166 Orchard St., New York.
Sworn.

582

Hirsh Merlis continued.

John J. McGowan Homicide Squad Sworn.

Samuel Pearl 298 E. 45 St. Sworn.

Henry G. Nelson Shield 12154 Traffic K
Sworn.

William S. King Shield 972 75 Squad Sworn.

Henry F. Butts Shield 824 Ballistic Bureau
Sworn.

Minutes of Trial

583

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 21 day
of October 1941.

Peoples Witnesses:

Max Kaufman 1801 1st St., Peoria, Ill.
Sworn.

584

William R. Jarvis Shield 479 75 Squad
Sworn.

Trial continued to October 22, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 22nd day
of October 1941.

585

Trial continued from October 21, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses:

Simon P. Ambraz U. S. Army, Camp Upton,
N. Y. Sworn.

Abraham Waxman 1167 Wilmohr St. Sworn.

Harold E. Rosen 1611 Perkionem Ave., Read-
ing, Pa. Sworn.

Harold E. Rosen continued

Hyman W. Barran 135-21 229 St., Laurelton,
L. I. Sworn.

Trial continued to October 23, 1941.

586

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 23 day
of October 1941.

Trial continued from October 22, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

587

Peoples witnesses: continued

Hyman W Barron continued

Anthony O DeSario 610 Ovington Ave. Sworn.

Sylvia R Greenspan 401 Schenectady Ave.
Sworn.

Trial continued to October 24, 1941.

588

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 24 day
of October 1941.

Trial continued from October 23, 1941.

All appearances noted. The jurors sworn in
the case all appear and answer to their names.

Peoples witnesses:

Sylvia R Greenspan continued

Sylvia R Greenspan continued

Sol Bernstein Half Moon Hotel Sworn

Trial continued to Monday, October 27, 1941.

Minutes of Trial

589

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 27 day
of October 1941.

Trial continued from October 24, 1941.

All appearances noted. The jurors sworn in
the case all appear and answer to their names.

Peoples witnesses: Continued

Sol Bernstein Continued

Sol Bernstein Continued

Trial continued to October 28, 1941.

590

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 28 day
of October 1941.

591

Trial continued from October 27, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses: continued

Sol Bernstein Recalled

Sol Bernstein Recalled

Trial continued to October 29, 1941.

592

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 29 day
of October 1941.

Trial continued from October 28, 1941.

All appearances noted. The jury heretofore
sworn in the case all appear and answer to the
call of their names.

593

Peoples witnesses: continued

Sol Bernstein Recalled

Trial adjourned to October 30, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 30 day
of October 1941.

594

Trial continued from October 29, 1941.

All appearances noted. The jury heretofore
sworn in the case all appear and answer to the
call of their names.

Peoples witnesses: continued.

Sol Bernstein recalled.

Sol Bernstein recalled.

Trial continued to October 31, 1941.

Minutes of Trial


595

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 31 day
of October, 1941.

Trial continued from October 30, 1941.

All appearances noted. The jury heretofore
sworn in the case all appear and answer to their
names.

596

Peoples witnesses: 

Max Rubin address refused Sworn

Max Rubin recalled

Trial continued to November 3, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 3 day of
November, 1941.

597

Trial continued from October 31, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses: continued.

Max Rubin recalled

Trial continued to November 5, 1941.

598

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 5 day of
November, 1941.

Trial continued from November 3, 1941.

~ All appearances noted. The jury heretofore
sworn in the case all appear and answer to their
names.

599

Peoples witnesses: continued.

Max Rubin recalled.

Trial continued to November 6, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 6 day of
November, 1941.

600

Trial continued from November 5, 1941.

All appearances noted. The jury heretofore
sworn in the case all appear and answer to the
call of their names.

Peoples witnesses: continued

Max Rubin recalled

Max Rubin recalled

Trial continued to November 7, 1941.

Minutes of Trial

601

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 7 day of
November, 1941.

Trial continued from November 6, 1941.

All appearances noted. The jury heretofore
sworn in the case all appear and answer to
their names.

602

Peoples witnesses: continued.

Max Rubin recalled.

Edward C Maguire 122 E 42 St, New York
Sworn

Paul Berger Bossert Hotel, Sworn

Paul Berger recalled

Trial continued to November 10, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 10 day of
November, 1941.

603

Trial continued from November 7, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses: continued.

Paul Berger recalled

Paul Berger recalled

Trial continued to November 12, 1941.

604

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 12 day of
November, 1941.

Trial continued from November 10, 1941.

All appearances noted. The jury sworn in
the case all appear and answer to their names.

605

Peoples witnesses: continued

Paul Berger recalled.

Paul Berger recalled.

Albert Tannenbaum address refused Sworn
Trial continued to November 13, 1941.

606

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 13 day of
November, 1941.

Trial continued from November 12, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses:

Albert Tannenbaum recalled

Albert Tannenbaum recalled

Max Rubin recalled

Trial continued to November 14, 1941.

Minutes of Trial

607

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 14 day of
November, 1941.

Trial continued from November 13, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Peoples witnesses:

608

Max Rubin recalled.

Seymour Magoon 608 Pennsylvania Ave.

Sworn

Trial continued to November 15, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 15th day
of November, 1941.

609

Trial continued from November 14th, 1941. All
appearances noted. The jurors sworn in the
case all appear and answer to their names.

Peoples witnesses.

Seymour Magoon. Recalled.

Seymour Magoon. Recalled.

Albert E Amen 2171 Eastwood Ave., Chicago,
Ill. Sworn

Trial continued to November 17, 1941.

610

Minutes of Trial

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 17 day of November, 1941.

Trial continued from November 15, 1941.

All appearances noted. The jury sworn in the case all appear and answer to their names.

611

Peoples witnesses: continued

Albert A Amen recalled.

Joseph Bell 743 West Courthouse, Kansas City, Mo. Sworn

James C Ryan 90 Church St., New York Sworn

Thomas J Wynne 2667 Morris Ave., Bronx Sworn

People rest.

Motion by Mr. Climenko on behalf of defendant, Buchalter, for dismissal of indictment and verdict of Not Guilty. Denied.

612

Same motion by Mr. Talley for defendant Weiss. Denied.

Same motion by Mr. Rosenthal on behalf of defendant, Capone. Denied.

Defendant Buchalter's witnesses:

John J Fegan 5503 31 Ave., Woodside, L. I. Sworn.

Henry H Eisenberg 152 Bellevue St., Elizabeth, N. J. Sworn.

Trial continued to November 18, 1941.

Minutes of Trial

613

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 18 day of
November, 1941.

Trial continued from November 17, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Defendant Buchalter's witnesses: continued.

614

Henry H Eisenberg recalled

Larry H Cooper 1602 Ave. P., Brooklyn,
N. Y. Sworn

Michael J. Monz 6414 99 St., Queens Village,
L. I. Sworn

Nat Sobler 170 Bay 29 St., Brooklyn, N. Y.
Sworn

Nat Sobler continued.

Ellsworth Baker Monticello, N. Y. Sworn

Carl Shapiro 2301 Springdale Ave., Balti-
more, Md. Sworn

Trial continued to November 19, 1941.

615

616

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 19 day of
November, 1941.

Trial continued from November 18, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

617 Defendant Buchalter's witnesses: continued.

Carl Shapiro recalled

Carl Shapiro recalled

Trial continued to November 21, 1941.

618

Minutes of Trial

619

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 21 day of
November, 1941.

Trial continued from November 19, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Defendant Buchalter's witnesses: continued.

620

Carl Shapiro recalled

William W Kleinman, Camp Wheeler, Ga.
Sworn

The witness, testifying for defendant, Weiss,
taken out of order.

Carl Shapiro recalled

John J Canevari 2401 Cortelyou Road
Sworn

Defendant Buchalter rests.

Defendant Weiss's witnesses:

Harry Cohen 32 Glenmore Ave., Sworn

Harry Cohen recalled

Sidney Weiss 10 Monroe St., New York City
Sworn

621

Trial continued to November 22, 1941.

622

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 22 day of
November, 1941.

Trial continued from November 21, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

623

Defendant Weiss's witnesses: continued.

Sidney Weiss recalled

Sidney Weiss recalled

Samuel Weiss 10 Monroe St., New York
Sworn

Dorothy Isachsen 148 Clinton St., New York
Sworn

Trial continued to November 24, 1941.

624

Minutes of Trial

625

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York on the 24 day of
November, 1941.

Trial continued from November 22, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Defendant Weiss's witnesses: continued

626

Blanche Weiss 10 Monroe St., New York
Sworn

Blanche Weiss recalled

He' n A Hazley 871 Pavonia Ave., Jersey
City Sworn

L a Weiss 10 Monroe St., New York Sworn

T al continued to November 25, 1941.

627

628

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 25 day of
November, 1941.

Trial continued from November 24, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

629

Defendant Weiss rests.

Defendant Capone rests.

Peoples witnesses: in rebuttal

James P Malone Shield 1797 Manhattan
G. J. Squad Sworn

John J. Whalen 1746 Manhattan G. J. Squad
Sworn

Vanse Newman 55 Pierrepont St. Sworn

People rest.

Motion by Mr. Climenko on behalf of defend-
ant Buchalter for dismissal of indictment and
direction of verdict of not guilty. Denied.

630

Same motion by Mr. Talley; for Weiss. De-
nied.

Same motion by Mr. Rosenthal for Capone.
Denied.

Trial continued to November 26, 1941.

Minutes of Trial

631

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 26 day of
November, 1941.

Trial continued from November 25, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Mr. Barshay sums up for Buchalter.

632

Trial continued to November 27, 1941.

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 27 day of
November, 1941.

Trial continued from November 26, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

633

Trial adjourned to November 28, 1941, on ac-
count of the illness of Judge Taylor.

634

Minutes of Trial

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 28 day of
November, 1941.

Trial continued from November 27, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

635

Summation by Mr. Talley for defendant Weiss.

Summation by Mr. Rosenthal for defendant
Capone.

Trial continued to ~~November~~ November 29, 1941.

636

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 29 day of
November, 1941.

Trial continued from November 28, 1941.

All appearances noted. The jury sworn in the
case all appear and answer to their names.

Summation by Mr. Turkus for the People.

Charge to the jury by the Court.

The two alternate jurors discharged in ac-
cordance with section 358a of the Code of
Criminal Procedure.

The jury retire to deliberate, in custody of
Officers Fitzsimmons, Meek, Frawley and Lehit-
ter and Captain Gannon, who were first duly
sworn.

Minutes of Trial

637

At a term of the County Court, held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 30 day of
November, 1941.

Trial continued from November 29, 1941.

All appearances noted.

Returning into Court the jury in the presence
of the three defendants and their counsel, answer
to the call of their names and say they find all
three defendants guilty of Murder in the first
degree.

638

Mr. Barshay moved that the jury be polled.
Jury polled.

A true extra-t from the minutes.

FRANCIS J. SINNOTT,
Clerk.

639

640

**Judgment of Conviction against Defendant
Louis Buchalter**

At a Term of the County Court held
in and for the County of Kings,
at 129 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 2nd day of
December, 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

641

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS BUCHALTER, alias "LEPKE".

#22855

642

Indicted for Murder, First Degree, and convicted thereof, as charged, by the verdict of a jury on November 30th, 1941.

Being personally present and sworn says: My true name is Louis Buchalter; I am 44 years of age; I was born in New York City; I reside at 427 West Street; I am retired; I am married; I can read and write; I am a Public School graduate; I am a Hebrew, irregular attendant; my mother is living; I am temperate; I do not use drugs; asked as to previous convictions, the defendant remained mute.

*Judgment of Conviction against Defendant
Louis Buchalter*

643

The defendant and his counsel being present and the defendant being asked if he had anything to say why the judgment of the law should not be pronounced against him, and he having nothing to say, the Court pronounced judgment as follows:

WHEREUPON, it is Ordered and Adjudged by the Court that the said Louis Buchalter, alias "Lepke", for the murder in the first degree of Joseph Rosen, whereof he is convicted, be and he hereby is sentenced to the punishment of death, and that within ten days from this date, the Sheriff of the County of Kings deliver the said Louis Buchalter, alias "Lepke", together with the Warrant of this Court, to the Agent and Warden of Sing Sing State Prison at Ossining, where he shall be kept in solitary confinement until the week beginning with Sunday, January 4th, 1942, and that upon some day within the week so appointed the Agent and Warden of the said Sing Sing State Prison, at Ossining, shall do execution upon him, the said Louis Buchalter, alias "Lepke", in the mode and manner prescribed by law.

644

645

A true extract of the minutes.

FRANCIS J. SINNOTT

(Seal)

Clerk.

646

**Death Warrant against Defendant
Louis Buchalter**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

647

LOUIS BUCHALTER, alias "LEPKE".

#23855

Death Warrant

State of New York }
County of Kings } ss.:

To the Agent and Warden of Sing Sing State
Prison at Ossining, New York:

648

WHEREAS, at a trial term of the County Court held in and for the County of Kings on the 4th and 5th days of August, 1941, the 16th, 18th, 19th, 24th, 25th, 26th, 29th and 30th days of September, 1941, and the 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th, 29th, 30th and 31st days of October, 1941, and the 3rd, 5th, 6th, 7th, 10th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 21st, 22nd, 24th, 25th, 26th, 28th, 29th, and 30th days of November, 1941, the above named Louis Buchalter, alias "Lepke", was put upon his trial for

*Death Warrant against Defendant Louis
Buchalter*

649

the murder of Joseph Rosen committed in the County of Kings on or about the 13th day of September, 1936, and upon said trial the said Louis Buchalter, alias "Lepke" having been found guilty of murder in the first degree on November 30th, 1941, for the killing of the said Joseph Rosen, and on the 2nd day of December, 1941 having been sentenced to be put to death in the manner provided by law on some day in the week beginning the 4th day of January, 1942.

650

NOW, IT IS HEREBY ORDERED that the execution of the said sentence be done upon the said Louis Buchalter, alias, "Lepke" by you, the said Warden of Sing Sing State Prison at Ossining, New York, in the manner provided by law, on such day in the week beginning the 4th day of January, 1942 as you shall determine, and within the walls of your said prison or inclosure thereto adjoining

WITNESS my hand at the Borough of Brooklyn, City of New York, County of Kings aforesaid on the 2nd day of December, 1941.

651

FRANKLIN TAYLOR
County Judge of Kings County.

Given under my hand and attested by the seal of the said Court this 2nd day of December, 1941.

(Seal) FRANCIS J. SINNOTT
Clerk.

652

**Judgment of Conviction against Defendant
Emanuel Weiss**

At a Term of the County Court held
in and for the County of Kings,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 2nd day of
December, 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

653

THE PEOPLE OF THE STATE OF NEW YORK

against

EMANUEL WEISS, alias "MENDY WEISS".

#23855

654

Indicted for Murder, First Degree, and convicted thereof, as charged, by the verdict of a jury on November 30th, 1941.

Being personally present and sworn says: My true name is Emanuel Weiss; I am 35 years of age; I was born in New York City; I reside at 427 West Street, Manhattan; I am a salesman; I am married; I can read and write; I have had a Public School education, 6th grade; I am Jewish, irregular attendant; my mother is living; I am temperate; I do not use drugs; I have previously been convicted of two Misdemeanors and one Felony.

*Judgment of Conviction against Defendant
Emanuel Weiss*

655

The defendant and his counsel being present and the defendant being asked if he had anything to say why the judgment of the law should not be pronounced against him, and he having nothing to say, the Court pronounced judgment as follows:

WHEREUPON, it is Ordered and Adjudged by the Court that the said Emanuel Weiss, alias "Mendy Weiss", for the murder in the first degree of Joseph Rosen, whereof he is convicted, be and he hereby is sentenced to the punishment of death, and that within ten days from this date, the Sheriff of the County of Kings deliver the said Emanuel Weiss, alias "Mendy Weiss", together with the Warrant of this Court, to the Agent and Warden of Sing Sing State Prison at Ossining, where he shall be kept in solitary confinement until the week beginning with Sunday, January 4th, 1942, and that upon some day within the week so appointed the Agent and Warden of the said Sing Sing State Prison, at Ossining, shall do execution upon him, the said Emanuel Weiss, alias "Mendy Weiss", in the mode and manner prescribed by law.

656

657

A true extract of the minutes.

FRANCIS J. SINNOTT

(Seal)

Clerk.

658

**Death Warrant against Defendant
Emanuel Weiss**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

659

EMANUEL WEISS, alias "MENDY WEISS".

#23855

Death Warrant

State of New York }
County of Kings } ss.:

To the Agent and Warden of Sing Sing State
Prison at Ossining, New York:

660

WHEREAS, at a trial term of the County Court held in and for the County of Kings on the 4th and 5th days of August, 1941, and the 16th, 18th, 19th, 24th, 25th, 26th, 29th and 30th days of September 1941, and the 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th, 29th, 30th and 31st days of October, 1941, and the 3rd, 5th, 6th, 7th, 10th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 21st, 22nd, 24th, 25th, 26th, 28th, 29th and 30th days of November, 1941, the above named Emanuel Weiss, alias "Mendy Weiss", was put upon his

*Death Warrant against Defendant Emanuel
Weiss*

661

trial for the murder of Joseph Rosen committed in the County of Kings on or about the 13th day of September, 1936, and upon said trial the said Emanuel Weiss, alias "Mendy Weiss" having been found guilty of murder in the first degree on November 30th, 1941, for the killing of the said Joseph Rosen, and on the 2nd day of December, 1941 having been sentenced to be put to death in the manner provided by law on some day in the week beginning the 4th day of January, 1942:

662

NOW, IT IS HEREBY ORDERED that the execution of the said sentence be done upon the said Emanuel Weiss, alias "Mendy Weiss", by you, the said Warden of Sing Sing State Prison at Ossining, New York, in the manner provided by law, on such day in the week beginning the 4th day of January, 1942 as you shall determine, and within the walls of your said prison or inclosure thereto adjoining.

WITNESS my hand at the Borough of Brooklyn, City of New York, County of Kings aforesaid on the 2nd day of December, 1941.

663

FRANKLIN TAYLOR
County Judge of Kings County.

Given under my hand and attested by the seal of the said Court this 2nd day of December, 1941.

FRANCIS J. SINNOTT
(Seal) Clerk.

664

**Judgment of Conviction against Defendant
Louis Capone**

At a Term of the County Court held
in and for the County of King.,
at 120 Schermerhorn Street, in
the Borough of Brooklyn, City
of New York, on the 2nd day of
December, 1941.

Present: Hon. FRANKLIN TAYLOR, County Judge.

665

THE PEOPLE OF THE STATE OF NEW YORK

against

LOUIS CAPONE.

#23855

666

Indicted for Murder, First Degree, and convicted thereof, as charged, by the verdict of a jury on November 30th, 1941.

Being personally present and sworn says: My true name is Louis Capone; I am 44 years of age; I was born in Naples, Italy; I reside at 2780 Stilwell Avenue; I am a restaurant owner; I am married; I can read and write; I am a Public School graduate; I am a Catholic, regular attendant; my father is living; I am temperate; I do not use drugs; I have never previously been convicted of a Felony or a Misdemeanor.

*Judgment of Conviction against Defendant
Louis Capone*

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The defendant and his counsel being present and the defendant being asked if he had anything to say why the judgment of the law should not be pronounced against him, and he having nothing to say, the Court pronounced judgment as follows:

WHEREUPON, it is Ordered and Adjudged by the Court that the said Louis Capone, for the murder in the first degree of Joseph Rosen, whereof he is convicted, be and he hereby is sentenced to the punishment of death, and that within ten days from this date, the Sheriff of the County of Kings deliver the said Louis Capone, together with the Warrant of this Court, to the Agent and Warden of Sing Sing State Prison, at Ossining, where he shall be kept in solitary confinement until the week beginning with Sunday, January 4th, 1942, and that upon some day within the week so appointed, the Agent and Warden of the said Sing Sing State Prison, at Ossining, shall do execution upon him, the said Louis Capone, in the mode and manner prescribed by law.

668

669

A true extract from the minutes.

FRANCIS J. SINNOTT

(Seal)

Clerk.

670

**Death Warrant against Defendant
Louis Capone**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

against

671

LOUIS CAPONE.

#23855

Death Warrant

State of New York }
County of Kings } ss.:

To the Agent and Warden of Sing Sing State Prison at Ossining, New York.

672

WHEREAS, at a trial term of the County Court held in and for the County of Kings on the 4th and 5th days of August, 1941, and the 16th, 18th, 19th, 24th, 25th, 26th, 29th and 30th days of September, 1941, and the 2nd, 3rd, 6th, 7th, 8th, 9th, 10th, 14th, 15th, 16th, 17th, 20th, 21st, 22nd, 23rd, 24th, 27th, 28th, 29th, 30th and 31st days of October, 1941, and the 3rd, 5th, 6th, 7th, 10th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 21st, 22nd, 24th, 25th, 26th, 28th, 29th and 30th days of November, 1941, the above named Louis Capone, was put upon his trial for the murder of Joseph

Death Warrant against Defendant Louis Capone

673

Rosen committed in the County of Kings on or about the 13th day of September, 1936, and upon said trial the said Louis Capone having been found guilty of murder in the first degree on November 30th, 1941, for the killing of the said Joseph Rosen, and on the 2nd day of December, 1941 having been sentenced to be put to death in the manner provided by law on some day in the week beginning the 4th day of January, 1942.

NOW, IT IS HEREBY ORDERED that the execution of the said sentence be done upon the said Louis Capone, by you, the said Warden of Sing Sing State Prison at Ossining, New York, in the manner provided by law, on such day in the week beginning the 4th day of January, 1942 as you shall determine, and within the walls of your said prison or inclosure thereto adjoining.

674

WITNESS my hand at the Borough of Brooklyn, City of New York, County of Kings aforesaid on the 2nd day of December, 1941.

FRANKLIN TAYLOR
County Judge of Kings County.

675

Given under my hand and attested by the seal of the said Court this 2nd day of December, 1941.

(Seal) FRANCIS J. SINNOTT
Clerk.

676

Case and Exceptions**COUNTY COURT****KINGS COUNTY****PART II**

THE PEOPLE OF THE STATE OF
NEW YORK

677

against

LOUIS BUCHALTER, alias
"LEPKE", EMANUEL WEISS, alias
"MENDY WEISS" and LOUIS
CAPONE,

Defendants.

Indictment
No. 23855.
Murder,
First Degree.

Brooklyn, N. Y., October 20, 1941.

Before—Hon. FRANKLIN TAYLOR, County Judge,
and a Special Jury.

678

APPEARANCES:

For the People:

Hon. WILLIAM O'DWYER,
District Attorney,

By BURTON B. TURKUS, Esq.,
SOLOMON A. KLEIN, Esq.,
LEWIS JOSEPH, Esq.,
Assistant District Attorneys.

Opening Statement on Behalf of People

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For the Defendant Buchalter:

HYMAN BARSHAY, Esq.,
 BERTRAM WEGMAN, Esq.,
 JESSE CLIMENKO, Esq.

For the Defendant Weiss:

ALFRED J. TALLEY, Esq.,
 JAMES I. CUFF, Esq.,
 M. M. KREINDLER, Esq.

For the Defendant Capone:

680

LEON FISCHBEIN, Esq.,
 EMANUEL ROSENBERG, Esq.,
 WILLIAM MURPHY, Esq.,
 SIDNEY ROSENTHAL, Esq.

THOMAS F. DARCY,
 JULIA A. MCGOWAN,
 Official Stenographers.

Mr. Turkus: In the interests of justice, I respectfully ask that all witnesses on both sides be excluded until after their testimony has been given.

681

The Court: All witnesses for both sides step outside. They will not confer or contact with one another.

(Mr. Turkus then made his opening statement to the jury as follows:)

May it please the Court, Mr. Foreman, and gentlemen of the jury: Now that you have been duly impanelled and sworn as the jury to try the issue between The People of the State of New York and these defendants at the bar,

682

Opening Statement on Behalf of People

Buchalter, Weiss and Capone, it becomes the duty of the District Attorney to state what The People of the State of New York intend to prove at this trial.

683

You will observe as my opening statement proceeds that it is not my intention to set forth each and every detail of the case. Witnesses, whom you will see and hear, will do that. At this time I shall state the highlights of the case so that you may readily follow the testimony of the witnesses when they reveal the facts to you.

684

Shortly before seven o'clock in the morning on Sunday, September 13, 1936, a uniformed police officer who was patrolling his beat on Sutter Avenue, in the Brownsville District of Brooklyn, suddenly observed a man in the middle of the street frantically waving both arms, shouting, "Police! Murder!" The police officer ran to his side. The civilian quickly blurted out a story. The officer dashed into the candy store located at 725 Sutter Avenue. Inside he saw a ghastly sight. There, on the floor of this little candy store lay the proprietor, Joseph Rosen, flat on his back, his arms outstretched; his face, neck and shirt were drenched with blood; pools of blood flowed from the body in the direction of the counter. Scattered newspapers were strewn on the floor. The body was at an angle, head facing toward the rear of the store, feet facing toward the front and side, legs spread apart. The eyes of the corpse were wide open, staring towards the ceiling.

The police officer questioned the civilian. He was a tailor, who lived across the street. At approximately 6:45 A. M. the tailor heard a

Opening Statement on Behalf of People

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series of shots ring out in the quiet of that Sunday morning. The tailor looked out the window. He saw an automobile pull away from in front of the Rosen candy store and start down Sutter Avenue. As the car drew away from in front of the store, the tailor saw the body of a man lying on the floor of this candy store. Whereupon, the tailor followed the car with his eyes to get the license number. As the car was going down Sutter Avenue, and before it reached the corner of Wyona Street, into which it turned, the tailor memorized the license number of that car. The policeman then telephoned an alarm; an alarm for a black sedan, License Number L-16-67, with four occupants.

686

Radio cars converged at the store, detectives and commanding officers arrived. The ambulance surgeon who responded pronounced the victim "Dead on arrival." The body and scene of the murder were guarded and remained untouched and undisturbed pending the arrival of the Medical Examiner. Photographs were taken by detectives of the Photo Gallery of the Police Department.

687

Dr. Marten, the Deputy Chief Medical Examiner of the City of New York, arrived and made an examination and inspection of the corpse at the scene. He then ordered the removal of the body to the Kings County Morgue, for autopsy. There, and prior to the autopsy, Harold Rosen viewed the body and identified it as being that of his father, Joseph Rosen.

The autopsy revealed that Joseph Rosen had virtually been riddled with bullets. His body had been pierced with seventeen entrance and exit bullet holes.

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Opening Statement on Behalf of People

Mr. Barshay: I object to that as an entirely improper statement.

689

Mr. Turkus: (continuing) At the point of objection I had come to the point where I told you that Rosen's body had been pierced with seventeen entrance and exit bullet holes. One bullet entered the left side of his face, near the ear, and came out in the back of his neck on the right side. A second bullet entered at the lower left jaw, passed through the brain, and lodged itself in the temporal muscle on the right side of the head, where it was recovered by the Medical Examiner. A third bullet entered on the left side of the neck, went from left to right, almost horizontally, and imbedded itself in the back of his neck. This bullet was likewise recovered by the Medical Examiner. There were thirteen other entrance and exit wounds where bullets had punctured and penetrated the chest, shoulder and neck of the victim.

690

Two bullets, as stated, were recovered by Dr. Marten, on autopsy. Four bullets were pried out of the floor, directly beneath the victim's body. Another was extracted from the floor near the body; and still another bullet which passed through the wall of the candy store, was recovered on the floor in the millinery shop next door. The recovered bullets were sent to the Ballistics Bureau of the Police Department, for examination.

At approximately 10:40 that very Sunday morning, on Van Sinderen Avenue, about twenty-five or thirty feet north of Livonia Avenue, in the Brownsville section of Brooklyn, a detective discovered an abandoned automobile bearing

Opening Statement on Behalf of People

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License Plates L-16-67 N. Y. 1936; the very car for which the alarm had issued. This car was a Chevrolet, two-door, four-passenger hard top vehicle, black in color, now commonly called a coach. The place of abandonment of the vehicle was close by the I.R.T. and B.M.T. station and railroad bridge at that location.

The operator of the candy store and news stand at this station actually saw this car abandoned at about seven o'clock that Sunday morning. Four men got out of the car and walked up the stairway to the left of his stand. This stairway permitted access to the I.R.T. station and to a bridge which crossed over the railroad tracks, and had an exit a block away on the other side. The news stand operator paid no special attention to the men and could effect no identification of any of them.

692

The abandoned Chevrolet coach was a stolen car. It had been stolen from the Crown Heights section of Brooklyn sometime between midnight on Friday and nine o'clock in the morning on Saturday, from in front of 621 Lefferts Avenue, where it had been parked over night by the owner, near his residence. The discovery of its theft and report thereof was made by the owner on Saturday morning and a police alarm then sent out for its recovery.

693

The license plates, L-16-67, affixed to this Chevrolet, were not the license plates which had been issued for the car by the Bureau of Motor Vehicles. The license plates L-16-67 also had been stolen, but from a different vehicle, namely, a Ford, which had been stored in a private garage on East 96th Street, in the Brownsville

694

Opening Statement on Behalf of People

section of Brooklyn. The owner of the Ford automobile had last seen it the day after Labor Day when he put the car away and locked the garage doors. The discovery of the theft of the plates was made the very morning of the murder when detectives came to interrogate the owner of the plates. Accompanying the detectives to the private garage, the owner discovered for the first time that the padlock had been broken and the plates were missing.

695

Under the direction of Captain John J. McGowan, the commanding officer of the Brooklyn Homicide Squad in charge of all detectives in the Homicide Division in the Borough of Brooklyn, photographs were taken of the stolen car. In addition, under his direction and supervision, a chalk and mercury mixture was dusted on the windshield, the body of the car, the license plates, inside mirror, and all other places where there might likely be a fingerprint, in an endeavor to bring out fingerprint impressions. The search for fingerprint clues was fruitless.

696

Far away from the place where the murder car was abandoned, a pedestrian shortly after eleven o'clock the very morning of the murder, walking along Ralph Avenue at a point about one hundred feet north of Church Avenue, discovered a gun in the grass, near the sidewalk. He picked up the weapon, looked at it, and then carried it over to a police officer directing traffic in that vicinity. Quickly, notification of this find was given to the detectives working on the Rosen case. The gun was sent to the Ballistics Bureau of the Police Department for inspection and examination.

Opening Statement on Behalf of People

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The Commanding Officer of the Ballistics Bureau personally conducted the examination and inspection of the weapon. This gun was a Colt 38-caliber police positive, special.

In an endeavor to trace the serial number of the gun this ballistics expert made an examination of the gun at the three points where the serial numbers should have been. There he discovered that the numbers had been mechanically removed and obliterated, so that they were not visible either to the naked eye or with a magnifying glass. Then with acids he attempted to bring out or restore those serial numbers by etching, that is, bringing to view a ghost-like number which then gives you what the number was before it was obliterated. The obliteration, however, had been too thorough and the expert was unable to bring up the serial number or enough of it so that a trace could be made.

698

In addition to the obliteration of the numbers, the gun had received other mechanical treatment after it had left the factory. At the muzzle end of the barrel a thread had been cut. ~~This~~ had been cut for the attachment of a "silencer" to muffle or do away with the sound of a report. The "silencer" was not affixed to the gun but the threading for it was covered by a "collar."

699

As I have already related, eight bullets were now at the Ballistics Bureau for examination. Of the eight, you will remember, two of the bullets had been extracted from the body of Joseph Rosen by the Medical Examiner, and the remaining six bullets had been found at the scene of the murder. Four of these eight bullets were half metal-case bullets and the other four

700

Opening Statement on Behalf of People

were copper-coated bullets. One of the bullets recovered from the body of Joseph Rosen by the medical examiner was a half metal-case bullet, and the other was a copper-coated bullet. The eight bullets were microscopically examined and tests made. The tests revealed that the four half metal-case bullets were fired from the very gun found in the lot; whereas, the four copper-coated bullets had been fired from another gun, of similar make. The gun, however, which fired the four copper-coated bullets, was never recovered.

701

Thus, briefly, the proof discloses that in advance of the murder an automobile was stolen from the Crown Heights section of Brooklyn; the license plates were stolen from another car in the Brownsville district, the stolen plates were switched to the stolen car; the murder was committed; the killers fled from the scene in the stolen car; they abandoned the car at the railroad bridge, and escaped without identification, not a single fingerprint clue was found on the murder car; only one of the guns used in the killing was found, but that with the serial numbers obliterated, blocking trace of its sale or ownership. In short, the killers had made a clean getaway and left no clues in their wake.

702

This is the point, gentlemen, where we naturally ask ourselves what is the proof as to why the proprietor of a penny business should be the victim of a brutal murder, carried out with flawless technique. Who was this Joseph Rosen?

Joseph Rosen had been a candy store owner in the Brownsville district only a few months. All his adult life he had been in the clothing-

Opening Statement on Behalf of People

703

trucking business, starting as a driver and working up to a partnership in the business. The trucking concern in which he was a partner was disrupted, Rosen was forced out. The defendant Buchalter and others manipulated the deal. Rosen, through Buchalter and a union official, was put to work as a foreman. Several months later Rosen was discharged. Then he walked the streets endeavoring to reinstate himself in the clothing-trucking industry, complaining that Buchalter had put him out of business. Finally, Buchalter and this union official put Rosen to work again, but this time as a truck driver. This job lasted only a short time and again Rosen was out of employment. Ultimately, Rosen ended up in the little candy store in Brownsville at 725 Sutter Avenue.

704

In the latter part of the year 1935, the Honorable Herbert H. Lehman, the Governor of the State of New York, appointed an Extraordinary Special and Trial Term of the Supreme Court for the purpose of inquiring into

(1) Any and all acts of racketeering and vice;

705

(2) Any and all acts of organized crime or any other crime;

(3) Any connection between such acts and any law enforcement officials, committed or alleged to have been committed by any and all persons, including public officers, within the County of New York, in violation of the provisions of the Penal Law of the State of New York or the penal provisions of any other general, special or local law.

706

Opening Statement on Behalf of People

Thomas E. Dewey was the Special Prosecutor designated to conduct the investigation.

Several months after the Dewey investigation got under way, Joseph Rosen threatened to go to Dewey and tell what he knew. In an attempt to silence him, \$200 was turned over to Rosen in his candy store, and he was told to go out of town and stay out, until everything blew over. Rosen took the \$200 and he did leave town, but he stayed away for only a few days, and then came back.

707

Thereafter, Rosen again threatened to talk. On September 13, 1936, in the manner that I have already described, Rosen's lips were forever sealed by a stream of bullets from two guns.

But nothing happened. Weeks passed—months passed—in fact, year after year went by—still nothing happened.

In May, 1940, something did happen. The case was broken from the inside. Then on May 28, 1940, the Grand Jury of Kings County handed down an indictment for murder in the first degree against these defendants, Buchalter, Weiss, and Capone, together with others, for the murder of Joseph Rosen.

708

The indictment duly found by the Grand Jury reads:

Opening Statement on Behalf of People

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“County Court of the County of Kings.

“The People of the State of New York,

Plaintiffs,

against

Louis Buchalter, alias ‘Lepke’,

Emanuel Weiss, alias ‘Mendy Weiss’,

Harry Strauss, alias ‘Pittsburgh Phil’,

James Feraco,

Philip Cohen, alias ‘Little Farvel’,

Louis Capone,

710

Defendants.

“The Grand Jury of the County of Kings by this indictment accuse the defendants of the crime of murder in the first degree, committed as follows:

“The defendants on or about September 13, 1936, in the County of Kings, wilfully, feloniously and of malice aforethought shot and killed Joseph Rosen, with revolvers.

711

“William O’Dwyer,

District Attorney.

“A true bill:

JOHN B. MALONE,

Foreman.”

712

Opening Statement on Behalf of People

The defendant Harry Strauss, alias "Pittsburgh Phil," is no longer alive. In so far as the defendants Philip Cohen, alias "Little Farvel", and James Feraco, are concerned, the indictment against them has been severed by this Court, which means they will not be tried together with these defendants at the bar.

The testimony to be given in open court will show you what the Rosen killing is all about.

713

In the days when Rosen was a partner in the clothing-trucking business the defendant, Lepke, together with certain officials of the Amalgamated Clothing Workers of America, set out to run that industry, to their liking and benefit. To effectuate this, Rosen was one of the clothing-truckers who had to be dealt with and who, as I have already stated, ultimately wound up running a penny candy store.

Rosen, however, was bitter. He complained endlessly against Lepke for his plight. When the Dewey investigation got under way Rosen threatened to get even.

714

To keep Rosen's mouth shut, it was the defendant Lepke who ordered Rosen to get out of town and stay out until the Dewey investigation blew over. Max Rubin, the business agent of Local 240 of the Clothing, Drivers and Helpers Union, and a trusted aide of the defendant Lepke, was sent by Lepke to do this job. It was Max Rubin who delivered Lepke's message and the \$200 to Joseph Rosen. It was at Lepke's orders that Rosen left town, but, as you know, Rosen came back.

The Dewey investigation was under way. Word that Rosen was back and again threatening to tell all that he knew, reached Lepke. Then it was

Opening Statement on Behalf of People

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that Lepke ordered the execution of Joseph Rosen; the murder to have a double-barreled effect: An object example to all others who might dare to talk; and to forever end Rosen's threat to go to Dewey.

Mr. Climenko: We respectfully except and ask the Court to instruct the jury to disregard reference to what is not part of an opening.

The Court: Objection overruled.

Mr. Climenko: Exception.

Mr. Turkus: (continuing) At the point of objection I told you that it was Lepke who ordered the execution of Rosen—that the murder was to have a double-barreled effect: An object example to all others who might dare to talk; and to forever end Rosen's threat to go to Dewey.

716

Events moved with rapidity. Weiss was assigned to handle the details by Lepke; Lepke personally furnishing Weiss with the man to "finger" Rosen, that is, to point out the victim to Weiss. Capone, "Pittsburgh Phil", Strauss, Feraco and "Farvel" Cohen went to work with Weiss. "Sholem" Bernstein was brought in.

The conspirators made their plans. The preliminary details, namely, the theft of the murder car and plates and a "drop" or garage for its concealment until needed—were promptly attended to.

717

The victim was "fingered" to Weiss. Capone schooled Bernstein in the route to be used for the "getaway," driving Bernstein, who was to be the "wheel man," or chauffeur, over the route again and again until Bernstein knew it by heart—from beginning to end—the end being the place of abandonment of the car at the railroad bridge.

The stage having thus been set, the conspirators set out to kill their victim.

718

Opening Statement on Behalf of People

Briefly (for the details will be given you in the testimony), the victim was followed from his home to the little candy store that Sunday morning, September 13, 1936. Pursuant to plan and agreement, Weiss and Strauss entered for the "kill." Armed with a loaded gun, Feraco stood outside, as the "lookout." Bernstein sat at the wheel of the getaway car, motor running. Weiss and Strauss pumped shot after shot into Rosen. They made sure he would never reach Dewey's office.

719

Into the waiting getaway car they piled. Weiss and Strauss gave instructions, but Bernstein adhered to the route that Capone had drilled into him the day before. The car, as planned, came to a halt at the railroad bridge, where it was abandoned. Out stepped the four, Weiss, Strauss, Feraco and Bernstein. Past the news stand, up the stairs, and over the bridge across the tracks to the Junius Street side they walked, to keep their rendezvous with Capone and "Farvel" Cohen. There, in wait, were Capone and Cohen—with two automobiles. Weiss passed his gun to one of his confederates, for destruction. The killers separated—Weiss, Capone, Strauss, and "Farvel" Cohen fleeing in one of the waiting cars in one direction, while Feraco and Bernstein fled in the second car in a different direction. Weiss's gun was destroyed—the second gun was flung into the lot, where it was subsequently discovered.

720

The murder having been successfully completed, Weiss duly made his report to Lepke.

Lepke set out to insure that there would be no arrest and prosecution in the Rosen case—no arrest and prosecution of himself and his ac-

Opening Statement on Behalf of People

721

complices. Lepke maintained contact with the movements and happenings in the Rosen investigation. To thwart and frustrate all investigation, Lepke sent witnesses out of the jurisdiction, keeping some out—permitting others to be questioned when he was satisfied that it was safe to do so.

Lepke soon decided that investigations must collapse, if witnesses are not available. In line with this decision, he ordered Rubin to leave town.

722

At Lepke's insistence and direction, Rubin was at times hidden and concealed in the City of New York and at other times shuttled from city to city throughout the nation. This continued until Rubin could no longer stand the continuous flight and concealment. Contrary to Lepke's orders he, too, came back to New York City, to stay.

Three days after Max Rubin had testified before a Grand Jury in New York County, a bullet was fired into the back of his head—

Mr. Barshay: Now I object to that as having absolutely nothing to do with this case.

723

The Court: Objection overruled.

Mr. Barshay: I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Barshay: Exception.

Mr. Talley: We all join in that motion and exception.

The Court: Yes.

Mr. Turkus: Gentlemen, before the objection of counsel I told you that three days after Max Rubin had testified before a Grand Jury in New York County, a bullet was fired into the back of

724

Opening Statement on Behalf of People

his head, which emerged at the bridge of the nose, in close proximity to his eye.

This shooting was directed and planned by the defendant "Mendy" Weiss,—

Mr. Talley: I object. If your Honor please, that has nothing whatever to do with the case, is inflammatory and improper. I move that the District Attorney be directed to refrain from bringing in extraneous matters of that kind. I move for a mistrial and the withdrawal of a juror.

725

Mr. Climenko: Defendants join in that motion.

Mr. Rosenthal: As to the defendant Capone, this has no connection with him, and I make the same motion as was made by the two other defendants.

The Court: Motion denied.

Mr. Rosenthal: Exception.

726

Mr. Turkus: (continuing) Gentlemen, before the interruption or objection, I told you that the shooting of Max Rubin was directed and planned by the defendant "Mendy" Weiss, who had learned that Rubin was "talking." Miraculously, however, Rubin was more fortunate than Rosen. Unlike Rosen, Rubin's lips were not sealed. Rubin survived, and will testify at this trial—the trial for the murder of Rosen.

Mr. Foreman and gentlemen of the jury: The proof that you are about to receive in this court of justice will establish to your satisfaction, beyond all doubt, that these defendants, Louis Buchalter (alias Lepke), Emanuel Weiss (alias Mendy Weiss), and Louis Capone, in combination are three of the killers of Joseph Rosen.

Motion to Dismiss Indictment

727

For The People of the State of New York, the interests of justice will require a verdict of guilty as charged—guilty of murder in the first degree.

The Court: Is there any opening by counsel for the defendant Buchalter?

Mr. Barshay: Before that /I would like to make some motions.

The Court: Yes.

Mr. Barshay: First I move to dismiss the indictment on the ground that, as a matter of law, Mr. Turkus, the Assistant District Attorney, has failed to set forth sufficient facts to connect the defendant Buchalter with the commission of this crime.

728

The Court: Motion denied.

Mr. Barshay: Exception.

Secondly, I object to the opening of the District Attorney on the ground it was highly prejudicial, highly inflammatory, concerning matters not binding on the defendant Buchalter, and containing evidence of other crimes, in violation of law.

The Court: Motion denied.

729

Mr. Barshay: Exception.

Mr. Talley: I make the same motion in behalf of the defendant Weiss.

The Court: Motion denied.

Mr. Talley: Exception.

Mr. Rosenthal: I make the same motion in behalf of the defendant Capone.

The Court: Motion denied.

Mr. Rosenthal: Exception.

The Court: You may open for the defendant Buchalter.

730 *Opening Statement Waived as to Defendants*

Mr. Barshay: We will not open.

The Court: You waive?

Mr. Barshay: Yes.

The Court: Is there any opening for the defendant Emanuel Weiss?

Mr. Talley: No, we waive opening.

The Court: Any opening for the defendant Capone?

Mr. Rosenthal: Opening waived for Capone.

731 Mr. Barshay: Now, may I request your Honor to instruct the jury at this time that the opening of the Assistant District Attorney shall not be considered by them as evidence in this case.

The Court: The jury is so instructed. Evidence comes from witnesses and such exhibits as may go into the case.

732 Mr. Cuff: I ask your Honor to instruct the jury now that the statement made by the District Attorney in his opening, with respect to the shooting of Max Rubin be entirely disregarded by them as not being a proper part of the opening address in this case, in which there is no mention of the shooting or killing of Max Rubin in this indictment. We are here on one indictment. The District Attorney has gone on an entirely different matter. If Rubin was not killed it was an entirely different issue; it is no part of this complaint at all; it was injected for no other purpose except to inflame the minds of the jury before any evidence is taken at all against the defendant Weiss in this case.

Mr. Turkus: It was an endeavor to kill off a witness in this prosecution; of course it is admissible.

The Court: You do not have to argue it. The previous ruling applies.

Mr. Cuff: Exception.

Estelle Rosen—For People—Direct

733

ESTELLE ROSEN, residing at 345 Wyona Street in the Borough of Brooklyn, City and State of New York, called as a witness in behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Where did you reside in September of 1936? A. 345 Wyona Street.

Q. Are you the widow of Joseph Rosen? A. Yes, sir.

Q. How many years were you married to him? A. About twenty-five.

Q. At the time of his death how old was he? A. Forty-six.

Q. At the time that you married him, Mrs. Rosen, what was his business? A. He was working in the men's clothing line.

Q. Had he been working in that line when he was courting you? A. Yes, sir.

Q. How many years had he been courting you? A. About a year or eighteen months.

Q. For how many years did he remain in the clothing-trucking line? A. He always was in that line.

Mr. Rosenthal: I object on the ground she said "clothing line."

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. Do you recall when your husband went into the candy store business? A. I do.

Q. When was that? A. It was around April or May of 1936.

734

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Q. Where did he maintain his candy store? A. 725 Sutter Avenue, Brooklyn.

Q. Was he in that business at the time of his death? A. He was.

Q. Are you familiar with the places of employment he had when he was in the clothing-trucking business? A. I think so.

Q. Where did he first work?

737

Mr. Barshay: Objected to as immaterial.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Lippman Bros.

Q. Do you know how long he worked there?

A. About eleven or twelve years.

Q. Following that where did he work? A. I think for Arensweig Bros.

Q. After that where did he work? A. Louis Miller.

Q. Then what was his next employment? A. He went to the Garfield Express.

738

Q. Do you know how long he worked for the Garfield Express? A. A few years.

Q. Were those all clothing trucking employments you are relating to this jury? A. That is right.

Q. After he left the Garfield Express, where did he go to work? A. He went in business for himself.

Q. Did he return to work for the Garfield Express? A. He did.

Q. Did he ultimately go into business with a man named Kelly? A. That is correct.

Q. What was the business they were engaged in? A. Men's clothing, the same line.

Q. When you say "men's clothing," do you mean the trucking of men's clothing? A. That is correct.

Q. After he had been in business with Kelly for some period of time, did he join the force or join up with some other men? A. Yes, sir.

Q. Who were those men? A. Nat Sobler and Morris Blustein.

Q. After your husband had been in business with those men, under what name did they do business? A. The New York and New Jersey Transportation Company.

740

Q. Was that for the trucking of clothing? A. That is correct.

Q. After he was in business with those men under the name of the New York and New Jersey Transportation Company, did the business break up?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

741

A. He was forced out of business.

Mr. Barshay: I move to strike out the answer.

The Court: Strike it out. Just say whether or not it broke up.

The Witness: It broke up.

Mr. Barshay: Will your Honor instruct the jury to disregard the remark voluntarily made?

The Court: Yes.

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Mr. Rosenthal: On behalf of the defendant Capone, may I have a general objection and exception to this entire line of questioning as not binding upon him.

The Court: You mean the last one?

Mr. Rosenthal: All these questions referring to whatever it may be in the garment trade as depicted by Mr. Turkus.

The Court: That would not be in order.

743

Mr. Rosenthal: I make a general objection as to any testimony regarding any connection of Rosen with any trucking business or otherwise in so far as it affects the defendant Capone, as in no wise binding upon him.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

The reason why I do this at this time is so I do not have to interrupt the continuity of Mr. Turkus's examination.

By Mr. Turkus:

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Q. After this business, the New York and New Jersey Transportation Company, broke up, what did your husband do? He walked the streets.

Mr. Barshay: I object to that.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. What had happened in the New York and New Jersey—what was his status there? A. Partner.

Q. Sometime after the business of the New York and New Jersey Trucking Company broke

up, did your husband secure a position or a job?

A. He did.

Q. Who employed him? A. He went back to Cooper.

Q. Cooper, of the Garfield Express? A. Yes, sir.

Q. Did he go back as a foreman? A. Yes, sir.

Q. What was the first name of this Cooper? A. Louis.

Q. And the Garfield Express, was it located in New Jersey? A. That is correct.

Q. Do you know the town? A. Passaic, New Jersey.

Q. After your husband worked for Cooper about six or seven months, what happened?

A. He was fired.

746

Mr. Cuff: I object. I object to that as a conclusion of the witness.

The Court: It is purely collateral. I will take it.

Mr. Cuff: I think we should have competent testimony given in a case of this kind. She is not competent to testify to what she is.

747

Q. (The Court) Was his connection discontinued? A. It was.

Mr. Barshay: I respectfully object and move that the answer she volunteered (that he was fired) be stricken out.

The Court: Yes.

Q. Did your husband's connection with Louis

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Cooper or the Garfield Express end? A. That is right.

Q. Sometime after it ended did you go to the clothing district? A. I did.

Q. About how long after your husband's connection with Louis Cooper ended, did you go to the Garment District? A. Shortly.

Q. Did you go there to meet somebody? A. I did.

Q. Who was it?

749

Mr. Climenko: I object.

The Court: Objection overruled.

Mr. Climenko: Exception.

Mr. Barshay: May we have the date, Mr. Turkus?

The Witness: I do not remember exactly the date.

By the Court:

Q. About the year—about how many years ago?

750

Mr. Barshay: May we have it before 1935 or after 1935?

The Witness: It was after 1935.

Q. Was it when your husband was still alive?
A. Oh, yes.

By Mr. Turkus:

Q. Have you given the date as your best recollection? A. It was around 1935.

Q. The question was, Who did you meet there in the clothing district? A. Max Rubin.

Q. Was Max Rubin business agent for the Clothing Drivers and Helpers Union?

Mr. Barshay: Objected to as leading.

Mr. Turkus: If you want me to ask it the way you want it, I will go right ahead.

The Court: You will have to re-frame it.

Q. Who was Max Rubin? A. Business agent for the Clothing Express Union.

Q. Did you talk to Max Rubin? A. I did.

Q. What did you say to him?

Mr. Barshay: I object to that as not binding on the defendant Buchalter, or any other defendant.

Mr. Turkus: It will be connected.

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Talley: I take it an exception made by one counsel applies to all, doesn't it.

The Court: Yes.

Mr. Talley: Throughout the trial?

The Court: Yes.

Mr. Rosenthal: An objection may be based on one ground by one counsel and an entirely different ground by another.

The Court: I am not restricting you.

Mr. Talley: Then, if there is another ground, we will have to make a separate

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objection. My only thought was whatever benefit there may be—

The Court: It simply means one thing. Counsel makes objection to evidence and excepts. Other counsel fail to stand up, but they nevertheless have the advantage of it. But it does not prevent anybody from standing up and making a separate objection upon any other ground.

755

By Mr. Turkus:

Q. You were asked about relating a conversation you had with Max Rubin in the clothing district. A. I went over and I told him my husband lost his job. I went over to Rubin and told him that for no reason at all my husband lost his job, and I would like to see Mr. Cooper.

Mr. Barshay: I object to that as not binding on the defendant.

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The Court: Objection overruled.

Mr. Barshay: Exception.

Q. (The Court) You would like him to speak to Mr. Cooper? A. Yes, sir.

Q. What else did you say to Rubin, if anything? A. I told him that I—I don't remember the exact words—I would like him to take me to Cooper and ask him why my husband was discharged. He told me— In fact, he took me down to Cooper.

Q. Did you and Max Rubin go some place after you spoke to him? A. Yes, sir.

Q. Where did you go? A. I think it was in the clothing district on Fifth Avenue somewhere.

Q. Who did you see there when you got there with Max Rubin? A. Louis Cooper.

Q. Is that the Louis Cooper connected with the Garfield Express? A. Yes, sir.

Q. Did you there have a talk with Louis Cooper? A. I did.

Q. Was Max Rubin there at the time? A. He was.

Q. What was said?

Mr. Barshay: I object to that as not binding on the defendants.

The Court: Objection overruled.

Mr. Barshay: Exception.

Mr. Talley: I except on the ground it is not binding on Weiss.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Will you kindly relate to the jury what was said in that talk between you, Cooper, and Rubin? A. I went over to Cooper and I talked to Cooper and I said, "After all these years my husband worked for you and he was an honest worker, and a good fellow, why did you discharge him?" He said, "Mrs. Rosen, I cannot say anything to you. It is not my fault. Go over and see Lepke."

Mr. Barshay: I move to strike out the answer as not binding on the defendant.

The Court: I will take it subject to connection. If it is not connected, the

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Court then will, upon motion, strike it out.

Mr. Turkus: It will be connected by other witnesses.

The Court: Not by this witness.

Mr. Turkus: No.

Q. After Cooper told you to go see Lepke, did you talk to Max Rubin? A. Yes, sir, I asked Max Rubin to take me to see Lepke.

761

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Did he do so? A. He promised me, but he did not. I never did.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

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Mr. Barshay: Exception.

Q. Can you estimate how long it was that your husband remained unemployed after he was discharged by Louis Cooper?

Mr. Barshay: Objected to as not binding on the defendant.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. About eighteen months, I would judge.

Q. Now, did he find him another job after eighteen months, as you estimated it?

Mr. Barshay: If your Honor please, she said that conversation took place sometime in 1935.

The Court: I understood around that time.

Mr. Barshay: Now, eighteen months he was out of employment, and now Mr. Turkus is questioning her about another job. I would like your Honor to ask this witness again to speak of the day when she first saw Rubin.

764

The Court: She said she does not remember; apparently she kept no diary; that is a long time ago.

Mr. Barshay: Exception.

Q. Before objection by counsel I asked you, after your husband remained unemployed, following his discharge by Louis Cooper, for about eighteen months, as you estimate it, did he then get another job? A. Yes, sir.

765

Q. When he worked for Louis Cooper what position did he hold? A. He was manager or foreman of the Garfield Express.

Q. Did you know his salary? A. I think at that time he was getting either \$100 or \$125 a week.

Q. And so, after approximately eighteen months of unemployment, he got another job? A. Yes, sir.

Q. This time who employed him? A. Larry Cooper, I think.

766

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Q. Is Larry Cooper any relation to Louis Cooper? A. He is not.

Q. How long did that job last? A. Just a few months.

Q. Did your husband then remain unemployed again? A. He did.

Q. Did that last for some time? A. It did.

Q. To your knowledge, did he make any effort to reinstate himself in the clothing trucking industry? A. He made every effort.

767

Q. Was he successful? A. He was not.

Q. Was it then that he opened a candy store? A. That is right.

Q. Approximately when did he open the candy store? A. It must have been around April or May of 1936.

Q. Where did he open this candy store? A. 725 Sutter Avenue.

Q. Is that in the Brownsville district of Brooklyn? A. Yes, sir, in East New York.

Q. Directing your attention to the middle of July, 1936, did your husband come home one evening and talk to you? A. He did.

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Q. You are not permitted to say what he told you, but at that time did he come home with something in his possession?

Mr. Barshay: I object.

The Court: That does not call for information as to whether or not she saw something in his possession. Objection sustained.

Q. That evening, when your husband came home, in the middle of July, 1936, did you see

him in possession of something? A. Yes, sir, he had money in his hand.

Q. How much money did he have? A. \$200.

Mr. Climenko: I move to strike out the answer on the ground that it calls for a conclusion; it is not binding on any of the defendants in this case.

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. At that time how much did you and your husband have in the bank?

Mr. Barshay: I make the same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. About one dollar and some change.

Q. Does \$1.20 refresh your recollection?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Something around that.

Q. When your husband had this \$200 did he talk to you? A. He did.

Q. After that talk what did your husband do? A. He left.

Q. Did he pack up? A. He did.

Mr. Barshay: I object to counsel leading.

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The Court: Objection overruled. This is all leading up.

Mr. Barshay: Exception.

Q. Answer this question yes or no: Did he tell you where he was going? A. Yes, sir.

Q. Did you have a son named Harold? A. I have.

773

Q. At that time when your husband left your house where was Harold, your son, living? A. Reading, Pennsylvania.

Q. Sometime after your husband left home, did you receive a telephone call? A. I did.

Q. Who was the telephone call from? A. From my husband.

Mr. Barshay: I object to that as not binding on any of the defendants.

The Court: Objection overruled.

Mr. Barshay: Exception.

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Q. And at that time, Mrs. Rosen, what was the condition of your health?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I was not well.

Q. While your husband was gone who took care of the store? A. I did.

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. After you and your husband spoke on the telephone, what happened? A. He came home the next morning.

Q. Did he go back to his store? A. He did.

Q. Directing your attention to the Saturday before your husband was killed, were you in the store? A. I was.

Q. Were you there during the evening? A. I was.

Q. Was your husband there? A. He was.

Q. Can you fix approximately the time when your husband went home that night? A. It must have been about 11 or 11:30.

Q. Who closed the store that Saturday night? A. I did.

Q. About what time did you close the store?

A. It must have been between 1:30 and 2 o'clock.

Q. In the morning? A. Yes, sir.

Q. That would be early on Sunday morning?

A. Yes, sir, that is correct.

Q. Did you ever close the candy store yourself before that Saturday night? A. I did not.

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. What is your answer, that you had not?

A. That is correct.

Q. Coming back to the Saturday night before he was killed, and referring to the evening, while your husband was in the store did some man come in the store? A. Yes, sir.

Q. Did you see what that man did—yes or no?

A. Yes, sir, I did.

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Estelle Rosen—For People—Direct

Q. Tell this Court and jury what you observed this man do.

Mr. Barshay: Objected to as not binding on the defendant.

The Court: This is taken subject to connection. Objection overruled.

Mr. Barshay: Exception.

779

Q. Tell us what this man who came in the store—

Mr. Rosenthal: (interrupting) I object unless the man is identified.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. He walked into the store in his shirt sleeves and walked to the back of the store. I followed him and he bought a cigarette for a penny, a single cigarette, and he just looked around the place.

780

Mr. Barshay: I object and move to strike out the answer as not binding on the defendant.

The Court: Motion denied. Objection overruled.

Mr. Barshay: Exception.

Q. Was it customary in that neighborhood to sell single cigarettes? A. Yes, sir.

Mr. Barshay: I object.

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The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Will you tell the jury how far into the store this man walked, the man you described as being in his shirt sleeves?

Mr. Barshay: The same objection.

The Court: Overruled.

Mr. Barshay: Exception.

782

A. Quite a distance in the back of the store. There was a toilet there and he walked in the back of the store.

Q. Where was your husband in the store at that time? A. In the front of the store, at the window; the open window.

Q. Were there single cigarettes at the open window? A. Yes, sir, there were.

Q. This man, who served him, you or your husband? A. I did.

Q. And a short time later did you see that man again? A. Yes, sir.

Q. Where did you see him the second time? A. He came in again and bought another cigarette.

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Q. On the second occasion was your husband still in the store? A. He was.

Q. Now, on Sunday morning, September 13, 1936—

Mr. Barshay: I move to strike out all the testimony with respect to the unidentified man.

The Court: Motion denied.

Mr. Barshay: Exception.

784

Estelle Rosen—For People—Direct

Q. On Sunday morning, September 13, 1936, at some time in the morning did you see your husband? A. Yes, sir, he woke me before he went down.

Q. Do you remember approximately what time that was? A. It must have been about six o'clock or a little later; I don't know.

Q. Did you ever see your husband alive after that? A. I did not.

785

Q. Did you see his body after he had been shot? A. I don't remember it.

Q. Coming back to the man who was in the candy store that Saturday night, who was that man? A. The man sitting there (indicating in court-room).

Q. Point him out. A. With glasses, right in the front row.

Q. Indicating the defendant Emanuel Weiss, alias Mendy. A. He was not so heavy at the time.

Q. Did he wear glasses? A. He did not.

786

Mr. Barshay: I object to it on the ground that it is not binding on the defendant Buchalter.

The Court: Objection overruled.

Mr. Barshay: Exception.

May I ask your Honor to instruct the jury to disregard that statement with respect to the defendant Buchalter?

The Court: I will instruct the jury at the proper time. Your motion is denied.

Mr. Rosenthal: I make the same objection on behalf of Capone.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Cross-examination by Mr. Barshay:

Q. You remember the first name of the gentleman for whom your husband worked last, Mr. Cooper? A. Louis Cooper.

Q. Is that his name? A. Yes, sir.

Q. And his place of business was in Brooklyn? A. Passaic, N. J.

Q. No, the last Mr. Cooper. A. Larry?

Q. That is one of the men, is that his name, Larry? A. Yes, sir.

Q. He had a place of business in Brooklyn? A. Yes, sir.

Q. Was your husband sick at the time he worked for this Larry Cooper in Brooklyn? A. He was not feeling very well from the trouble he went through.

788

Mr. Barshay: I move to strike out the last part of the answer.

The Court: Strike it out.

Q. Was your husband complaining of a heart condition when he was working for Larry Cooper? A. He did.

789

Q. Was your husband receiving medical treatment at the time he was working for Larry Cooper for a heart condition? A. I don't remember.

Q. Do you know of your own knowledge whether or not your husband had been visiting a physician for any kind of treatment about that time? A. I don't remember.

Q. Do you know whether or not your husband quit voluntarily when he worked for Larry Cooper? A. I don't remember.

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Estelle Rosen—For People—Cross

Q. Did your husband tell you that he could no longer work because of this illness? A. I don't remember.

Q. You know of your own knowledge that Larry Cooper did not discharge your husband, don't you? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. You do not claim Larry Cooper discharged your husband, do you?

791

Mr. Turkus: I object to the form of the question; the widow does not claim anything; she is here as a witness for the People.

Mr. Barshay: She has claimed substantially, on direct examination—

Mr. Turkus: I ask that the remark of counsel be stricken out.

Mr. Barshay: It is not a remark; it is directly in answer to your argument.

The Court: I think the Court excluded any testimony that he was discharged, on the ground that the witness did not know.

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Mr. Barshay: We did not come to the point of discharge by Larry Cooper; there were two Coopers.

The Court: Did the witness say he was discharged?

Mr. Barshay: No, she did not say anything.

The Court: Then the objection is sustained.

Mr. Barshay: Exception.

Q. Do you know Larry Cooper personally? A. Maybe if I saw him.

Q. Did you ever speak to him? A. I think I did.

Cross-examination by Mr. Talley:

Q. You have answered some seven questions asked by counsel with the reply, "I don't remember." Do you mean to tell us you don't remember whether your husband was ill and receiving medical attention in 1936?

Mr. Turkus: Objected to as argumentative.

794

The Court: Objection overruled.

A. I do not remember.

Q. Your answer is you do not remember whether or not your husband was being treated for heart trouble in 1936; is that correct? A. All I know is that he was worrying—

Mr. Talley: I move to strike out the answer as not responsive.

Mr. Turkus: I move that it stand. It is responsive.

795

The Court: Let it stand.

Mr. Talley: Exception.

Q. Do you not remember whether or not he was attending a physician or a physician was attending him, a visiting physician? A. I do not remember that.

Q. You would have been concerned if you thought your husband had heart failure or heart trouble, wouldn't you?

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Estelle Rosen—For People—Cross

Mr. Turkus: Objected to as to form.

The Court: Sustained as argumentative.

Q. Was your husband in debt at the time the candy store was opened or shortly before that?

A. He was.

Q. Do you know how much money he had borrowed at that time? A. No.

Q. Was it \$200? A. I beg your pardon?

797

Q. That he had borrowed, that he was in debt for. A. He never borrowed \$200.

Q. Did he borrow any money at all at or about the time he opened the candy store? A. He owed some money, certainly, he borrowed money.

Q. He did borrow? A. Yes, sir.

Q. Do you know from whom he borrowed it? A. Yes, sir, I do.

Q. Do you know it had not been paid in 1936, in September? A. It had not been paid?

Q. Yes. A. I don't know anything about it.

798

Q. You did not know anything about your husband's business then, did you? A. I knew to a certain extent.

Q. Well, did you know he was in debt for money borrowed in 1936—did you know it to that extent? A. He did not borrow no money from anybody from the outside; from no outside people did he borrow money; I know that.

Q. Who did he owe the money to that you say he did owe? A. He just owed it to my sister when we bought the store.

Q. From whom he bought the store? A. When we bought the store.

Q. He bought it from your sister? A. No,

sir; he borrowed the money from her to buy the store.

Q. How much did he borrow from her? A. A few hundred dollars.

Q. How many hundred? A. I don't remember whether one hundred, two hundred, or three hundred; I don't remember.

Q. Did your sister ever tell you how much she had loaned to him? A. No, sir, I don't know.

Q. You don't know whether your sister told you that or not? A. No, sir.

800

Q. Or is it you do not remember? A. I do not remember.

Q. Do you know all that he owed? A. He did not owe anything.

Q. How do you know? A. Because he told me.

Q. He told you he did not owe any money? A. No, sir, not on the outside.

Q. The only person you know to whom he was indebted for money was your sister? A. That is correct.

Q. What is her name? A. Do I have to answer that?

801

Mr. Turkus: I will object to it as improper cross-examination; nothing about that has been brought out on direct.

The Court: No harm in it. Objection overruled.

Mr. Turkus: She may have a reason for not divulging the name of her sister.

Q. Give me the name and address of the sister.
A. I don't like to mention her name here.

802

Estelle Rosen—For People—Cross

Q. Whether you like it or not, I am asking you to give me the name. A. Rose Rosenblatt.

Q. Rose Rosenblatt? A. Yes, sir.

Q. Is that Mrs. Rose? A. Yes, sir.

Q. Where does she live now? A. 1864 Eightieth Street.

Q. Was she living there in 1936? A. She was.

Q. When did she lend the money to Mr. Rosen?

A. Just before we bought the store.

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Q. You say that was something around three or four hundred? A. Something like that.

Q. When you say "something like that," just how much do you mean? A. I don't know exactly.

By the Court:

Q. Were you there? A. When she loaned the money, no, sir, but I was told he went to borrow it because he had no other alternative; we had to do something.

804

Q. Judge Talley asked you if any money was borrowed, and you said yes, but you did not make it clear whether you knew it. A. I did know he was going there for the money, yes, sir.

Q. He told you? A. Yes, sir; I knew it. I phoned my sister before to tell her he was coming for the money.

By Mr. Talley:

Q. Did your sister take the money out of the bank and give it to him? A. I would not know that.

Q. You mean you would not know it or you do not remember? A. I don't know whether she had it on hand in her bag or whether she had it in the bank.

Estelle Rosen—For People—Cross

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Q. Did she have a bank account in 1936? A. I do not know her private affairs.

Q. Did she tell you she had loaned your husband money? A. That is right.

Q. She told you that much about her private affairs? A. Yes, sir.

Q. Did she tell you how much she had loaned him? A. I do not remember.

Q. Do you know when the loan was made? A. Before the store was bought.

Q. When was the store bought? A. Around April or May of 1936.

806

Q. How long before April or May of 1936 was the money loaned by your sister to your husband? A. Maybe a day or two before the store was bought.

Q. A few days before? A. Yes, sir, that is correct.

Q. The District Attorney asked you about the night of September 12th when you said you were in the store. A. Yes, sir, that is right.

Q. At what time did you say it was that the defendant Weiss, whom you pointed out, came into the store? A. I do not remember exactly what time, but it was late in the evening, maybe about 9 or 10 o'clock?

807

Q. Was that the first time he came into the store, between 9 and 10 o'clock? A. That is right.

Q. At what time was the second time you say he came in? A. Not long after, about maybe about half an hour after that.

Q. Did he say anything to your husband? A. He did not.

Q. Was your husband at the window, do you say, the first time he came in? A. Yes, sir.

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Estelle Rosen—For People—Cross

Q. Was he at the window the second time? A. I don't know where he was the second time; I don't remember.

Q. Did he have a hat on when he came in? A. No, sir.

Q. He was in his shirt sleeves. You mean by that that he had no coat on? A. That is right.

Q. You had never seen him before that night? A. I did not.

809

Q. That was on September 12, 1936? A. Yes, sir, that is right.

Q. When was the second time that you saw him? A. A half an hour after the first time he came in.

Q. That is all you saw of him that night? A. That is right.

Q. When, after that night, September 12, 1936, did you next see the defendant Weiss? A. Maybe about two years later.

Q. That would be 1938—that is about three years ago. A. 1938 or 1939.

Q. In what month of 1938 or 1939? A. I do not remember.

810

Q. Do you remember it was in 1939? A. Between 1938 and 1939.

Q. You mean either in 1938 or in 1939? A. Yes, sir.

Q. You do not remember what month? A. I do not.

Q. Do you remember what part of the year it was in? A. I do not.

Q. You do remember where it was, don't you? A. Yes, sir, I remember where it was.

Q. Where? A. Up in the Federal Building.

Q. Was that on Church Street? A. I don't know; I was taken there. I don't remember; I don't know where it was.

Q. Do you remember it was in the Borough of Manhattan? A. I think so.

Q. Do you remember it was not in the Borough of Brooklyn? A. It was in the Borough of Brooklyn.

Q. In whose office was it? A. I don't know in whose office.

Q. In whose office was it you saw him? A. I don't know whose office it was.

Q. Was it in the Court House or the Post Office Building? A. The Post Office Building.

Q. The Federal Building? A. Yes, sir.

Q. Who was there? A. I do not know who was there.

Q. Who went with you? A. Somebody took me down. I would not know the name of who took me down there.

Q. Did you ever know his name? A. The one that took me down?

Q. Yes. A. I did not—I do not remember.

Q. You do not remember that name? A. No, sir.

Q. Do you remember what floor it was you were brought to? A. I do not.

Q. Do you remember any name on the door of the place where you say you saw him? A. I know it was the Federal Building, that is all I know.

Q. At what time of the day or night was it when you went? A. Sometime in the afternoon.

Q. Had you given a description to anybody of the man whom you saw, that you say you saw in his shirt sleeves in your store? A. I did.

Q. Did you describe him as a man about 5 foot 6 inches or 7 inches tall? A. He was taller than 5 foot 6.

814

Estelle Rosen—For People—Cross

Q. Did you describe him as being a man 5 feet 6 inches or 5 feet 7 inches tall? A. I do not remember that.

Q. Did you describe him as being a man weighing about 135 pounds? A. Well, it was not 135 pounds; he was much heavier, but he wasn't as heavy as I saw him today.

Mr. Talley: I move to strike it out as not responsive.

815

The Court: I will allow it to stand.

Mr. Talley: Exception.

Q. My question is, didn't you describe him as a man weighing about 135 pounds? A. No, sir.

Q. At no time to nobody; is that right? A. Absolutely no.

Q. Did you describe him as being a man 5 feet 5 inches or 6 inches—5 feet 6 or 7 inches tall? A. I do not remember that; I think he was taller than 5 feet 6 or 5 feet 7.

816

Q. My question is, didn't you describe him as being 5 foot 6 or 7 inches tall and weighing about 135 pounds? A. No, sir.

Q. Now the next occasion you saw the defendant Weiss, after you saw him in the Federal Building—and you are agreed he was there? A. Yes, sir.

Q. The second time you saw him was when? A. A few weeks ago.

Q. That is the first time in the Federal Building, you say in 1937, 1938, or 1939? A. 1938 or 1939.

Q. Then you saw him a few weeks ago? A. Yes, sir.

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Q. When you say "a few", precisely how many do you mean? A. Maybe about six or seven or eight weeks back.

Q. You do not remember just when it was? A. I do not remember just when it was.

Q. Then you did not see him again until you pointed him out in this court-room? A. That is right.

Q. Where was it you say you saw him the second time several weeks ago? A. When they were picking a jury.

818

Q. In this Court House? A. I don't remember which court house.

Q. You say after the jury began to be picked in this case? A. Yes, sir.

Q. Was it in this room? A. I don't remember which room it was.

Q. You don't remember whether it was in this building or not? A. Oh, it was this building.

Q. You remember that? A. I think it was this building.

Q. You think it was? A. Yes, sir.

Q. (The Court) Was it a larger court-room? A. It was not in this room; I do not think it was this room.

819

Q. Do you say it was this room or not? A. I do not remember.

Q. Who brought you to the court-room in which the jury was being selected in this building? A. I was brought down by one of Mr. Turkus's men.

Q. Had you been in the District Attorney's office before you came to the court-room? A. I was.

820

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Q. Do you know who the man was who brought you over? A. I do not know.

Q. Was the defendant Weiss pointed out to you in the court-room? A. He was not pointed out; I pointed him out.

Q. Now, that was the only time you had seen him, in the court-room and in the Federal Court House? A. And in the store.

Q. And in the store? A. Yes, sir, that is right.

821

Q. Was there any court session when you went to the court-room some five or six weeks ago? A. Just picking the jury.

Q. Was the Judge on the bench? A. He was.

Q. Did you see the defendants come into the court-room? A. I seen them walk through.

Q. You saw them walk through the court-room? A. Yes, sir.

Q. They walked through with their guards? A. They did.

Q. Did you notice they had handcuffs on them? A. They did not.

822

Q. When they walked through the room? A. I don't think they did; I don't think they did; I don't remember.

Q. Did you see them coming in the room or leaving? A. I saw them coming in the room; I was not there when they left.

Q. Now, on the occasion when you were in the Federal Building, did you point Weiss out as the man you had seen in your store? A. Well, I seen him sitting there and I recognized it was him, only he was heavier than when he was at the time in the store.

Q. Did you tell anybody in the Federal court-

room that that was Weiss and that was the man in your store? A. Yes, sir.

Q. To whom did you point him out? A. To the detective that was with me. I don't remember who they are.

Q. Would you know him if you saw him again? A. I have seen so many, I don't remember.

Q. You would not remember him? A. No, sir.

Q. Have you seen him since you say you pointed Weiss out? A. I did not.

Q. Who was with Weiss when you say you saw him in the Federal Building? A. Nobody was with him; he was just sitting there alone. There were some detectives, or whoever they were, I don't know.

824

Q. Then, you cannot be right in saying nobody was with him if you saw detectives were with him. A. There were quite a number of them in the room.

Q. Why did you say nobody was with him? A. He was brought down; I saw him brought down; two detectives on both sides of him, into the room where I was sitting. I do not know where he was brought from.

825

Q. You were in the room first and Weiss was brought in? A. That is right.

Q. And brought in between two detectives? A. Yes, sir.

Q. He was the only prisoner that was in the room? A. That is right.

Q. Did they tell you they were going to bring Weiss down, so you could see him? A. They did not mention any name; they just asked me that they would bring someone down and if I recognize that man. They mention no names.

826

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Q. You knew you were there to recognize or identify somebody? A. That is right.

Q. Do you mean to say that up to that time, between the time you say you saw this man in his shirt sleeves in your store, up to the time you were in the Federal Building, that nobody told you you were brought there to identify Weiss? A. They did not mention any name; they just told me if I could identify somebody.

827

Q. Can you tell me the name of anybody that was in the room when they brought this man in between two detectives and pointed him out to you? A. No one pointed him out to me; and I don't remember.

Q. You don't remember what? A. I don't remember the name of the people who were in the room with me at the time.

Q. You don't remember the name, even, of the man who brought you down to the Federal Building? A. I do not.

Q. Have you seen him since? A. I have not.

Q. You mean no? A. I don't think so.

828

Q. You mean you don't remember whether you did or not? A. That is right.

Mr. Turkus: I object to this as having been already answered.

The Court: Objection overruled.

Q. Did any of the detectives or anybody else tell you they wanted you to identify Weiss? A. They did not mention any name to me.

Q. Did they describe the man they wanted you to identify as the one who had come into your store? A. They did not.

Q. Do you mean to say that all they said to

you was: "We want you to come and identify somebody"? A. That is right; it was done before.

Q. You are sure you told us the only places you saw Weiss after the night you say you saw him in the store? A. That is right.

Q. There was an interval of some three years, wasn't there? A. Yes, sir.

Q. Between the time you say you saw him in your store and the time you saw him in the Federal Building? A. Yes, sir.

830

Q. You say you immediately recognized him? A. Only he got heavier.

Q. Did you immediately recognize the man you saw in the Federal Building as the man who came in and bought two single cigarettes in your store on the night of September 12th or 13th, 1936? A. Certainly; that is right.

Q. And the night you saw him in your store, as you say, did he have a collar on? A. Well, it was a collar on, yes, he had a collar on his shirt; he wore a white shirt.

Q. Did he have a necktie on? A. I do not remember.

831

Q. Do you remember he wore a white shirt? A. Yes, sir.

Q. Do you know what kind of trousers he had on? A. No, sir.

Q. He was without a hat, you say? A. Yes, sir.

Q. When you saw him in the Federal Building, how was he dressed? A. He wore a suit, no hat.

Q. Had a coat on? A. Yes, sir.

Q. Did he have a collar and necktie? A. I do not remember.

Q. Did he have a hat on? A. No, sir.

832

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Q. You do remember he did not have a hat on?
A. That is right.

Q. When you saw him in the Federal Building did he have eyeglasses on? A. No, sir.

Q. You told us exactly what happened when these two detectives brought him into the room in the Federal Building in which you were waiting—you were there? A. I was there.

Q. You were sitting with some detectives? A. Sitting with two more women of the office.

833

Q. Two more women from the Federal office?
A. From the Federal office, correct.

Q. When they brought you there, did somebody say to you they were going to bring somebody in for you to identify? A. That is right, they would bring somebody in.

Mr. Turkus: I object to that as having been already answered.

The Court: Objection overruled.

834

Q. How long were you kept waiting there before they brought the defendant Weiss in? A. A few minutes.

Q. Then did these two men walk in with Weiss in between them? A. Yes, sir.

Q. Was he handcuffed? A. No, sir.

Q. He had nothing on his wrists at all, no chains, or anything else? A. No, sir.

Q. Are you sure about that? A. I am positive.

Q. What did you say when he was brought in? A. I did not say anything; I was sitting. I did not say anything.

Q. You were thinking? A. I said I was sitting.

Q. Did you say anything while he was there?
A. No, sir.

Q. Did you just look at him? A. Yes, sir.

Q. While he was there you did not say, "That is the man I saw in my candy store"? A. I did not say anything.

Q. Did he say anything to you? A. No, sir.

Q. He just came in and you just looked at him? A. He came in; they held a conversation; I don't know who spoke to him at the desk, but there was a conversation about a ring and a setting. They were asking him about some setting in a ring and how he paid the tax or something.

836

Q. You kept silent, looking at him? A. Yes, sir.

Q. Then he was taken out? A. Yes, sir.

Q. Then did you say, "That is the man who was in my candy store," or did you say, "I cannot identify him as the man"? A. I said to him, "He looks much heavier. He was not as heavy in the store. I have not seen him in a few years. He was slimmer when he came in my store."

837

Q. Were you in doubt as to whether he was the man? A. If he was slimmer, I would definitely say he was the man, but he put on weight, much weight; he got much heavier than in 1936.

Q. It created some doubt in your mind as to whether you were looking at the right man? A. It did not create. He did not wear his hair over his forehead; he wore his hair the same way, the same as it was in the store.

Q. Is it not a fact that when you saw him in the Federal Building that you said to all the

838

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people who were surrounding you in the room, "I cannot identify that man as the man who was in my store"? Didn't you say that in substance or effect? A. I do not remember saying that.

Q. Why were you brought into this courtroom in the last two or three weeks to look at the defendant Weiss, do you know?

Mr. Turkus: I object.

The Court: She said she was told.

The Witness: I was not told.

839

By the Court:

Q. When was the Federal Building affair?

A. It was between 1938 and 1939, about two or three years ago.

By Mr. Talley:

Q. That is the time I have been asking you about. Is it not a fact you then said you could not identify the man that was brought in by two detectives, as the man who was in your shop?

840

Mr. Turkus: Objected to as already answered.

The Court: Already answered. Objection sustained.

Mr. Talley: Exception.

Q. Didn't you on that occasion in the Federal Building say, when Weiss was brought in and

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you were asked if that is the man, didn't you then say, "I do not remember"?"

Mr. Turkus: Objected to as already answered.

The Court: Objection overruled.

A. I said I don't remember, yes, because he got so heavy.

The Court: Gentlemen, please do not discuss the case nor let anyone talk to you about it. Keep your minds open. For convenience we will make lunch hour from 12:30 until 1:30. Defendants remanded.

842

(Recess taken until 1:30 P. M.)

AFTERNOON SESSION. TRIAL RESUMED.

ESTELLE ROSEN, resumes the stand for further cross examination:

843

By Mr. Talley:

Q. Mrs. Rosen, after your husband was shot, were you interviewed by detectives? A. I was.

Q. And was that in your home? A. I was taken down to the police station.

Q. Whereabouts? A. I think it was on Miller Avenue.

Q. And did you then describe this man that you say came into your store the night before?

844

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A. For the spur of the moment I didn't remember anything. My mind was a blank.

Q. Is your answer that you did not?

Mr. Turkus: Objected to. It is already answered.

A. I don't remember what happened at that time.

845

Q. Didn't you tell the detectives when they first interviewed you the man that came into your store on that Saturday night that you are speaking of was a man about five foot six or seven and weighed about 135 pounds? A. At the moment I don't remember, or don't remember anything at all.

Q. Did you tell them anything at all? A. I would not remember.

Q. Did you ever tell anybody at any time that the man that came in your store on Saturday night was a man that answered that description?

846

A. I did talk to Mr. Turkus and Mr. Klein of a man that came into the store and tried to describe him.

Q. And did you describe him as weighing 135 pounds and being five foot six or seven? A. I don't think so.

Mr. Cuff: What is the answer?

The Witness: No, I don't think so.

Q. When did you describe this man to Mr. Turkus? A. Oh, that was long after the murder.

Q. How long after September 13, 1936, which was the date of the killing? A. Well, a few

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months later I picked a picture and I said, "That looks like the man that was in the store."

Mr. Talley: I move to strike that out.

Mr. Turkus: I move that it stand she picked a picture.

The Court: Let it stand.

Mr. Talley: Exception. May I have the question read, if your Honor pleases?

The Court: Yes.

(Question read by the reporter.)

848

Q. Did you talk to Mr. Turkus? A. Not at that time.

Q. How long after that time? A. I don't remember how long after.

Q. You do not remember whether it was weeks or months? A. I do not.

Q. Did you testify before the Grand Jury in this case? A. I did.

Q. Do you remember when that was? A. I would not remember that.

Q. Would it refresh your recollection if I said it was in May, 1940? A. I don't know. It was right after the killing.

849

Q. Right after the killing? A. I don't know how long after but after the killing.

Q. Would it be as long as a year after? A. No. Sooner than that.

Q. Was it six months after? A. I don't remember the exact time but it was a few months after or maybe a week. I don't remember exactly.

Q. What is your best recollection, Mrs. Rosen; was it a week or two after the killing or was it several months after? A. No, it was right after

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the killing, maybe a few weeks, maybe it was the following week.

Q. How many times did you testify before the Grand Jury? A. Once.

851

Q. When you testified before the Grand Jury, is it not a fact that you said nothing whatever about this man that came into the candy store on the night before the killing? A. Well, probably the spur of the moment I didn't remember it but after I remembered. After the murder I realized somebody did come in the store and look around.

Q. I am speaking about your testimony before the Grand Jury. Is it not a fact that you made no mention— A. I don't remember.

Q. Of that fact? A. I don't remember.

Q. You don't remember? A. I do not.

852

Mr. Talley: I ask your Honor for a direction to the District Attorney to produce the minutes of the Grand Jury in so far as this witness' testimony is concerned.

The Court: Have you any authority for that?

Mr. Talley: Why, yes, sir. I think the fact that this witness has stated—

The Court: Have you any authority?

Mr. Talley: —she does not recollect or does not know entitles me to have those Grand Jury minutes for the purpose of cross-examination.

The Court: Have you any authority at law on that point?

Mr. Talley: Not immediate except the

general authority that I am entitled to any papers that may tend to contradict.

The Court: Denied.

Mr. Talley: It is suggested to me the authority is *People against Walsh* in 262 New York. I did not think authority really would be necessary upon that point. Here is a document that I want to use to cross-examine this witness that is not within my control and is within the control of the District Attorney and subject to your Honor's direction and I submit that I am entitled to it.

854

The Court: You are not entitled to the Grand Jury minutes, Judge, unless the Court of Appeals—

Mr. Talley: Will your Honor examine the testimony—

The Court: Pardon me. I will finish. Unless the Court of Appeals has made a recent ruling which changes the law as it was always understood.

Mr. Talley: Will your Honor examine the Grand Jury minutes and this lady's testimony particularly in that regard?

855

The Court: I will be glad to.

Mr. Talley: Will you do so?

Q. You only testified once before the Grand Jury—

Mr. Turkus: Will you wait just a minute until we get the papers out?

Mr. Talley: Certainly.

Mr. Turkus: Thank you, Judge. I put a pencil mark on page 16.

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Mr. Talley: I request that if your Honor finds anything bearing upon this point on which I have interrogated this lady that you know my demand to inspect the Grand Jury minutes is before you and if you do I submit that I am then entitled to them without any question.

The Court: I will be glad to receive any authority of law giving any relaxation of the rigid rule which has always been against it.

857

Mr. Talley: This is different from an application before trial for inspection of the Grand Jury minutes.

Mr. Turkus: This has to be something contradictory.

The Court: Is this all her testimony?

Mr. Turkus: That is the particular part that—

858

The Court: You understand the request which is made places a responsibility on the Court of an unusual nature. There are 17 pages of testimony. The Court cannot read a few words that are pointed out but has to read the entire record.

Mr. Turkus: That is all.

The Court: I think it is an unfair burden. The Court should not be required to decide or assume any responsibility on contradictions unless the Court volunteers to do so. I am glad to read the minutes. I am reading them solely for the purpose of seeing if anything occurs to me to which I should direct the attention of the witness on that point but not because the

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Court considers that under the law it is under any obligation to do so. I have never known it to be done.

Mr. Talley: May I read to you the citation?

The Court: If you give me the citation, I will read it myself.

Mr. Talley: I ask your Honor to look at 262 New York, 140, at page 149. Read the excerpt.

Mr. Turkus: I believe that is the Walsh case that deals with a statement.

860

The Court: I read that case and I want to refresh my memory on it.

Mr. Talley: If you will just let me read this citation to you, that is all your Honor should require. Shall I continue?

The Court: If I have got to read the whole testimony of a witness before the Grand Jury several years ago, it means an interruption of the trial and there can be no questioning until I am through. The Walsh case was in 1933. There is a more recent authority, within the last few months. You might look that up and let me know later if you find it. I have a distinct recollection of having read it.

861

Mr. Talley: Your Honor does not recall the case, do you?

The Court: I did not memorize the name and citation. I read it in the advance sheets. This case has been followed in a number of cases where statements are involved, prior statements. I have never extended it to apply to Grand Jury minutes unless the Court found something in

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the nature of an inconsistency which it was the duty of the Court to have revealed to the jury.

Mr. Talley: I ask your Honor—

The Court: If you stop asking, I can do some reading.

Mr. Talley: I will stop asking until you finish, if you will tell me when you finish.

The Court: It is here. I think you would like to hear it before the jury hears it.

863

Mr. Talley: I would like to look at it.

The Court: Do you want to come up?

Mr. Talley: Yes.

(Mr. Talley, Mr. Cuff and Mr. Kriendler conferred at the bench with the Court, not within the hearing of the Jury).

(The following occurred at the bench, not within the hearing of the jury).

The Court: The Court offers to read from page 16 of the Grand Jury minutes of October 14, 1936, testimony of Estelle Rosen. Judge Talley objects to it being on the minutes. The Court, of course, sustains the objection so I will continue reading but not for the minutes—

864

Mr. Talley: May I object to the reading?

The Court: And also state or say to Judge Talley this puts more or less of a burden upon the Court because I have to read every question and answer and if I slip up on anything that I should notice and fail to call attention to it and it is reviewed for the first time in the appel-

late court, it reflects on the integrity of the trial court. I now continue it.

Mr. Talley: I object to the reading of any of the minutes unless the entire testimony of this witness is placed at my disposal, on my motion, and given to me for the purpose of cross-examination.

The Court: For the same reason you do not want this on the minutes which would only be for the discretion of the appellate court, I am quite sure you would not want all this testimony.

Mr. Talley: I certainly do not. I do not want any of it unless I could cross-examine her.

The Court: There is quite a lot of stuff you would not want.

Mr. Talley: Only on identification.

The Court: As far as the record is concerned, that is all.

(The Court continued to read).

Mr. Turkus: May the record show, your Honor, that I handed to you—

The Court: The record is complete.

Mr. Turkus: Has it got the date?

The Court: Yes.

Mr. Talley: I ask that the Grand Jury minutes, in so far as they apply to the testimony of this witness, be marked for identification.

The Court: Mark them for identification but as records I don't think they have to be so marked.

Mr. Talley: I want this record to show

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they are marked or considered marked in evidence.

The Court: Any court takes notice—

Mr. Talley: Even so, I ask that they be marked for identification, or regarded as marked.

869

The Court: The Court is not entering into a controversy. The Court said they would be marked. I am calling attention to the fact it is simply superfluous. They do not have to be marked. Mark them.

(Grand Jury minutes marked Defendants' Exhibit C for identification).

By Mr. Talley:

Q. Mrs. Rosen, do you know a Major Williams? A. Maybe I do. I don't remember him.

Q. Do you remember ever having met him? A. I don't remember no names.

870

Q. Were you ever in the office of Major Williams at 90 Church Street, Manhattan? A. I don't remember.

Q. Do you know a detective named Olivera, a Federal agent named Olivera? A. Maybe I do. I don't remember. I don't remember names.

Q. Do you say that you do not know Mr. Olivera and that you do not know Major Williams? A. I didn't say I don't know. I said I don't remember.

Q. That is you do not remember whether you know either one of them, is that right? A. Maybe if I see them I would know them. I don't remember names.

Q. Did you refresh your recollection during

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recess as to whether you were or were not at 90 Church Street in the office of Major Williams there? A. I don't remember.

Q. Were you ever brought to any office building, Federal office building, in the Borough of Manhattan, in connection with this case? A. I was.

Q. And was that a building 90 Church Street? A. I do not know where it was located at.

Q. Was it uptown or downtown in Manhattan? A. It was in Brooklyn, I think, the Post Office Building.

872

Q. I am asking you about 90 Church Street in the Borough of Manhattan. A. I don't remember.

Q. Have you been living in the Half Moon Hotel? A. That is right.

Q. How long have you been living there? A. About three months.

Q. Three months? A. About three months.

Q. That is these past three months? A. That is correct.

Q. And you are not paying your own bills there, are you? A. No.

873

Q. They are being paid by the District Attorney? A. I do not know who is paying them.

Q. You don't mean that, do you, Mrs. Rosen? A. I do. I do not know who is paying them.

Q. But you know that you are not paying them yourself? A. That is correct.

Q. And you have no idea who is? A. I don't know.

Q. Do you know Mr. Victor Herwitz of the District Attorney's office in New York County?

A. I don't remember names.

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Q. Did you ever hear the name before? A. I would not remember.

Mr. Talley: Mr. Herwitz, can I trouble you to stand up, please?

(Mr. Victor Herwitz, Assistant District Attorney, stands.)

Q. Did you ever see this gentleman before? A. I don't remember.

875

Q. You do not remember having seen him? Did you see Mr. Herwitz at any time in 90 Church Street, Manhattan? A. I do not remember.

Q. Do you remember having seen this gentleman who just stood up at any time? A. I don't remember.

Q. Don't remember that? A. No.

Q. Were you not in 90 Church Street— A. I don't remember.

Q. Let me finish, please. A. I am sorry.

876

Q. —at a time when Mr. Herwitz, who just stood up, was present and at a time when the defendant Weiss was brought in? A. Maybe he was there. I don't remember.

Q. You don't remember that? A. No, I do not.

Q. Do you remember whether Saturday night when you had this candy store was a busy night? A. It was a very hot night, I know.

Q. Isn't Saturday night the best night that you had for business? A. Well, this night was pretty fair. It was not a rush, a store where it was over rushed.

Q. Was it a busy night? A. Not very busy, not at all.

Q. It was busy enough for you to keep the store open until twelve or one o'clock in the morning, wasn't it? A. We usually kept it open until twelve or one o'clock whether we were busy or not.

Q. Did you keep it open every night in addition to Saturday night as late as that? A. Yes.

Q. Were there any other customers in the store on this Saturday night of September 12, 1936? A. There was no one in the store at the time.

Q. Nobody in the store at the time? A. No, just people passing. 878

Q. Do you remember that, that at the time you saw this man come into the store nobody was there except himself? A. When he came in nobody was there. I was in the store.

Q. Any customers? A. Well, I do not know; not that I remember.

Q. Not that you remember? Were there any customers there the first time he came in, which you said was between nine and ten o'clock? A. No.

Q. Were there any customers there the second time you saw him which was later? A. I would not remember. 879

Q. You do not remember? That is your answer? A. No.

Q. Were you not in another courtroom besides the one in which this jury was being selected, which is the courtroom on this floor adjoining this room that we are now in, at the time when Mr. Weiss was present? A. Will you please repeat that?

(Pending question read by the reporter.)

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Estelle Rosen—For People—Cross

Mr. Turkus: I object to it. It is ambiguous.

The Court: Overruled.

A. I don't remember. I don't think so.

By the Court:

Q. Before this trial, were you in another courtroom? This trial began in August. A. I was.

881

Q. Before August were you at any time in any courtroom when the defendant Weiss was brought in? A. I was.

Q. That was when he was first arraigned? That would be a long time ago. A. I don't remember. I was in the courtroom but he was not there at the time.

By Mr. Talley:

Q. How long ago was that? A. Well, that was a different trial entirely.

882

Q. How long ago was it that you— A. I do not remember.

Q. Will you let me finish the question? A. I am sorry.

Q. How long ago was it that you were in a courtroom in Manhattan and this defendant Weiss was there at the same time you were? A. Weiss was not there and I don't remember how long ago it was.

Q. When was the last time you saw Weiss before today? A. That was a few weeks ago.

Q. That was in this building? A. In this building.

Q. After this trial had commenced and the jury was being selected, is that right? A. When the jury was to be picked, correct.

Q. Who was it that brought you into the courtroom?

Mr. Turkus: Objected to. That has been gone over before the recess hour--detail.

The Court: I think so.

Mr. Talley: I am entitled to repetition on cross-examination.

884

The Court: Sustained.

Mr. Talley: I except to your Honor's ruling.

Q. Somebody brought you in?

Mr. Turkus: Objected to. It has been answered.

The Court: Sustained.

Mr. Talley: Exception.

Q. Describe the man or men who brought you into the courtroom that you said was from Mr. Turkus' office?

885

Mr. Turkus: Objected to. It has been answered before recess.

Mr. Talley: That has not been asked.

By the Court:

Q. Do you know who they were? A. I don't remember. I was brought in but I don't remember who they were.

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Estelle Rosen—For People—Cross

Q. Would you know them again if you saw them? A. I don't remember faces.

Q. Did you pay attention to the faces of them?

A. I was very nervous and so. I do not remember.

Q. Please listen. I do not care whether you were nervous or not. The question now is did you pay attention to the faces and names— A. I paid attention—

887

Q. Did you pay such attention to faces and names so that at this time you can remember them? A. I paid attention but I do not remember their faces.

By Mr. Talley:

Q. Did you tell his Honor just now that your memory is very poor on faces? A. I did not say it was very poor. I said I don't remember that particular day.

Q. What did you say about being poor on faces, to the Court?

888

The Court: She did not say that.

Q. What did you say about faces? A. I don't remember just which detectives or who the men were that brought me in on that particular day.

Q. I am asking you what you said in answer to the Court's question that you remember names but you do not remember faces?

The Court: She did not say that. The answer was specifically related to the men who brought her in.

Mr. Talley: I would like to have it read.

(Testimony in question read by the reporter.)

The Court: That was only a small part of the answer. (To reporter) Read that so the jury can hear.

(Testimony referred to read by the reporter.)

Mr. Turkus: That is referring to the detectives.

Mr. Talley: Referring to what?

Mr. Turkus: To the detectives.

Mr. Talley: We will let the jury determine what it is referring to.

The Court: Do you want to know the names of the detectives? Mr. Turkus may be able to give them to you.

Mr. Turkus: I will find out.

The Court: Then give them to Judge Talley.

Mr. Turkus: I will find out.

The Court: Normally a person would not notice a thing of that kind.

Q. Will you describe these persons or detectives that brought you into the courtroom since this jury was being impaneled? A. I cannot describe detectives.

Q. Cannot? A. ~~No~~.

Q. Where did they bring you from, the District Attorney's office? A. They brought me from my home.

Q. From your home? A. Correct.

Q. What time in the morning did they come

892

Estelle Rosen—For People—Cross

to your home to bring you? A. I do not remember.

Q. How did you get from your home to the court house? A. They took me down by automobile.

Q. I do not hear you, madam. A. They took me by automobile.

Q. And you rode with them in the automobile? A. That is right.

893

Q. How many were there? A. I don't remember.

Q. Where did they bring you to from your home in the automobile? A. To the court house.

Q. This court house that you are in now? A. I think so.

Q. Did you go to the District Attorney's office with them before you came into the court room? A. I did not.

Q. Did you go there after you had left the court room? A. I did not.

894

Q. How long was it between the time they called for you at your home and the time that you left them after having been in the court room in which this trial was progressing?

Mr. Turkus: I object to the form of the question.

The Court: Sustained.

Mr. Talley: Exception.

Q. How long were you in the company of these two men on the morning that you were brought into the court room?

Mr. Turkus: Object to the form of the question.

The Court: Sustained as irrelevant.

Mr. Talley: I am not only testing memory; I am testing credibility.

The Court: Mr. Turkus has said he would find out who they were and give you their names.

Mr. Talley: I am not interested in that, if your Honor pleases. I am interested in this witness from the question of both credibility and her power of description.

The Court: It is not a question of power of description; it is a question of circumstances. You might drive an hour in a taxicab, you might drive all day in a taxicab, and see the chauffeur at the wheel and pay no attention to him whatever— 896

Mr. Talley: I except to your Honor's statement.

The Court: —because there is nothing to make you look at him memorize his face. I might sit here watching the impaneling of the jury day in and day out, listening to many thousands of questions, and yet when the jury is impaneled I might not have had occasion to have fixed the looks of any particular jurymen in my mind so as to recognize him when I see him out of court; so I rule that it is irrelevant— 897

Mr. Talley: I object to the statement of the Court and take exception to it.

The Court: —that it is not a fair test and tends to be misleading and confuse the jury.

898

Estelle Rosen—For People—Cross

Mr. Talley: I ask leave to put this question—and do not answer this, madam, until the Court rules.

Q. What time intervened between the time the detectives came to your house, brought you to the court room and you left there together?

Mr. Turkus: Objected to. It is irrelevant.

899

The Court: Sustained.

Mr. Talley: Exception.

Q. You told the Court you paid attention to their faces, didn't you? A. I did not.

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Talley: Exception.

Q. Would you know these men again if you saw them?

900

Mr. Turkus: Objected to. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

Q. You now remember that you were brought to a court in Manhattan. Do you not remember that?

Mr. Turkus: I object to the form of the question.

Q. Do you? A. I was brought to a court. I don't remember where it was.

Q. Mrs. Rosen, you know whether the court was in the Borough of Manhattan or the Borough of Brooklyn, don't you? A. I don't remember where it was. I know I was taken, that's all, and after all I went with somebody that I could well be taken care of.

Q. Do you say that the court in which you appeared was not a court in the Borough of Manhattan? A. I do not say that.

Q. Will you say it was not in the Borough of Brooklyn? A. I do not say that.

Q. Do you know where it was? A. I do not.

Q. Was the defendant Weiss pointed out to you in that court room, wherever it was? A. He was not.

Q. What was the purpose of bringing you to that court room as explained to you?

Mr. Turkus: Objected to, if it please the Court.

The Court: Sustained.

Q. Were you told the purpose for which you were brought to this court room that you do not know whether it was in Manhattan or Brooklyn? A. Will you please repeat that again?

The Court: Did they tell you why you were brought to that court?

The Witness: They told me they were bringing in several men if I could identify them, if I know any one of the men.

Q. And did you identify any men that were brought into that court room? A. I did.

904

Estelle Rosen—For People—Cross

Q. You did not identify the defendant Weiss, did you?

Mr. Turkus: Objected to. She has answered that he was not there.

Mr. Talley: That is what she says. I am asking her if she identified the defendant Weiss.

905

Mr. Turkus: Please, sir, I have an objection. That is a tricky question. How can you identify somebody who was not there to be identified?

Mr. Talley: I do not ask tricky questions. I leave that to you.

Mr. Turkus: You are doing a pretty good job of it yourself. I object to the question on the ground that it is a tricky question.

The Court: Sustained.

Mr. Talley: Exception.

The Court: Did you see Weiss there?

The Witness: He was not there.

906

Q. Are you sure about that? A. I am positive.

Q. The fact is that you did not identify Weiss in that court room on that day, isn't that right?

Mr. Turkus: Objected to. It is answered that he was not there.

The Court: Sustained.

Q. Going back to the Saturday night in which you saw this man in his shirt sleeves, how long was he in your store the first time he came in? A. Just walked in, bought a cigarette and looked around and walked out.

Q. How long was he in the candy store the second time he came in? A. The same, just a few minutes, walked in, took a cigarette, looked around and walked out again.

Q. That would take about a minute, wouldn't it? A. I suppose so.

Q. What do you think? A. I do not know. It could not take more than a minute or two minutes, maybe three minutes; I don't know.

Q. When this man in shirt sleeves came into your place, did he give you any money?

Mr. Turkus: Object to this man as a man who was in his shirt sleeves. He has been identified by this witness.

Mr. Talley: The witness knows who I am referring to as the man who came into the store in shirt sleeves, the man she so described.

The Court: Overruled.

A. He paid for the cigarette.

Q. Whom did he pay, you? A. To me.

Q. How much did he give you? A. A penny.

Q. He handed you a penny? A. That is correct.

Q. And took out one cigarette, is that right?

A. That is right.

Q. And the second time that he came in, did he give you a penny? A. He did.

Q. He had no business, or transaction, or talk with your husband on either one of these occasions? A. Oh, no.

Q. And your daughter did not wait on him?

A. No.

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Estelle Rosen—For People—Cross

Q. And he did not give the penny or any other money to your daughter? A. To me.

Q. On both occasions he gave the money to you? A. That is right.

Q. And you gave him the cigarettes, is that right? A. Yes.

Q. Both times? A. That is right.

Q. Did you ever testify before the Grand Jury that this man that you described as being in his shirt sleeves gave your daughter a dollar? A. This man?

911

Q. The man that you say came in in his shirt sleeves on Saturday, September 12, 1936, to your store? A. No.

Q. Did you ever testify that the man who came into your store on that date, in his shirt sleeves, that you have described, gave your husband one hundred dollars? A. No.

Mr. Talley: Now I ask your Honor to turn over to me the Grand Jury minutes so that I can examine this witness upon this point.

912

The Court: Every question and answer on that point has been read to you by the Court. Upon your objection it was not taken by Miss McGowan as part of the record. Any one of those questions or answers may be read to the jury if you wish and made a part of the record.

Mr. Talley: I wish to have the Grand Jury minutes placed in my hands so that I can cross-examine or continue my cross-examination of this witness with respect to what she did or did not testify to before the Grand Jury.

Estelle Rosen—For People—Cross

913

The Court: You are not entitled to them.

Mr. Talley: I except to your Honor's ruling. I now ask that the question—

The Court: I am asking you, in view of the questions and answers which you know and which have just been read to you, which on your own objection have been kept out of the record, do you now wish them read to the trial jury?

Mr. Talley: Yes, I do.

914

The Court: Very well then.

Mr. Talley: I want to use them on cross-examination. I will read them to this witness if your Honor will give them to me.

The Court: I cannot give you the Grand Jury minutes and you know I have no right.

Mr. Talley: I know nothing of the kind, sir. I submit I am entitled in the process of cross-examination of this witness—

The Court: Take your exception.

915

Mr. Talley: Particularly in view of her testimony and your Honor having read the minutes, I am entitled to these Grand Jury minutes.

The Court: You are not entitled to the Grand Jury minutes on other points. I am giving you everything on this point.

Mr. Talley: I don't want them on the other points. I want them on this point.

The Court: You are not entitled to handle them and even use what is in the minutes on other points. You can look

916

Estelle Rosen—For People—Cross

over my shoulder at those points and you can see that the Court is accurate in what he read to you and in what you excluded from the record by your objection. You may come right over here and be persuaded that the Court is fair.

917

Mr. Talley: I don't need to look over the Court's shoulder to know that, sir. I do not like the suggestion. I ask your Honor to read to this jury this witness' answers before the Grand Jury on those two points, as to the question of the man paying her daughter a dollar and on the question of paying her husband a hundred dollars.

The Court: How about the rest of it?

Mr. Talley: I don't want the rest of it now. I am stabbing in the dark. You won't give me the minutes. How can I tell whether I want the rest or not?

Mr. Turkus: Let the part be read about the man in the shirt sleeves.

918

The Court: You are trying to create an impression that the Court is unfair.

Mr. Talley: I am doing nothing of the kind and I object to that statement of your Honor.

Mr. Turkus: The money obviously refers to something else.

The Court: How can I pick this out for his discussion? I will read the question to him. There will be an opportunity on your part, Judge Tailey, or on the part of any other counsel to object to the reading of the answer to that question, if you desire to object.

"Q. You saw him between eleven and twelve and your daughter saw him earlier in the evening?"

That finishes the question. The Court interpolates that the answer is obviously hearsay.

"A. Yes, she saw him walking up and down the block. I want to call your attention to one more thing. He gave my husband one hundred dollars and gave my little girl a dollar."

Mr. Talley: That is all I want, sir.

The Court: "Q. Were you there?" Do you wish that?

Mr. Talley: I object. I do not want any more than those two questions that I asked you for.

So that the record on this point may be complete and there will be no misunderstanding about it, I again ask that the testimony of this witness given before the Grand Jury be placed in my hands solely for the purpose of examining this witness upon her testimony.

The Court: The record is complete. You will not resume any discussion on that matter.

Mr. Talley: I except to your Honor's refusal.

Mr. Barshay: Will your Honor entertain an objection on my part, sir? I ask your Honor to instruct the jury to disregard that statement, question and answer, with respect to the defendant Buchalter not binding upon him.

922

Estelle Rosen—For People—Cross

The Court: I do, because it is obviously hearsay.

Mr. Barshay: That is right.

The Court: A child comes and prattles something to the mother, the mother tells it to the Grand Jury because there is no lawyer for the defense there to object. It is incompetent as evidence either for the purpose of procuring or supporting an indictment or procuring a conviction upon this trial.

923

Mr. Talley: I object to that statement of the Court.

Mr. Fischbein: Your Honor, I at this time, on behalf of the defendant Louis Capone, join in the objection on behalf of Louis Buchalter.

The Court: The jury is so instructed.

By Mr. Talley:

924

Q. Now I ask you, Mrs. Rosen, having heard the testimony read, did you so testify before the Grand Jury?

Mr. Turkus: Objected to. It is hearsay testimony.

The Court: Sustained.

Mr. Talley: Exception. May I call your Honor's attention to the fact there is nothing about hearsay testimony in that. She testified the girl had been given a dollar by this man in shirt sleeves and that the man in shirt sleeves paid her husband a hundred dollars.

Mr. Turkus: There is not a scintilla of

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925

testimony at all adduced from this witness that there was a man in his shirt sleeves paid a dollar or a hundred dollars to anybody.

Mr. Talley: The Court just read the testimony.

Mr. Turkus: Not the man in his shirt sleeves. You did not want it read.

Mr. Talley: Will the District Attorney concede so we won't have to call the Grand Jury stenographer here, that she testified in the manner that the Court read to the jury?

926

The Court: You do not have to concede it. It is part of the record and established.

Mr. Talley: No further questions.

By the Court:

Q. You are positive you did not see any dollar handed to your daughter or a hundred dollars handed to your husband? A. There was money given but not by this man in the shirt sleeves. There is some mistake somewhere.

927

Q. I am talking about this man. A. No, not this man.

The Court: The jury will decide whether or not there was any confusion.

The Witness: Not by this man, no.

Mr. Talley: I move to strike out the last statement made by the witness.

The Court: Denied.

Mr. Talley: Exception.

928

Estelle Rosen—For People—Cross

Mr. Barshay: May I ask your Honor for a direction to the jury that any testimony she gave up to now with respect to any identification of any person is not binding upon the defendant Buchalter?

The Court: Denied.

Mr. Barshay: Exception.

The Court: The jury will be charged at the proper time.

929

Mr. Barshay: May I ask your Honor to instruct the jury that your denial of my motion is not any indication that the testimony at this time is binding upon the defendant Buchalter but you are merely reserving—

The Court: Gentlemen, the Court charges the jury at the conclusion of the evidence and if the Court starts a policy of charging piecemeal throughout the trial, it will simply confuse the trial of the issue. Cases are not tried that way.

930

By Mr. Barshay:

Q. Madam, when you were told by Mr. Cooper to see Mr. Buchalter, it was at some time in 1935?

Mr. Turkus: Objected to. The witness has already stated that under oath, that she cannot fix the exact time.

Q. About 1935?

Mr. Turkus: Objected to. This is improper re-cross.

The Court: There has been no cross on behalf of Capone. That is the next in order. Mr. Barshay, you will have to wait until counsel for Capone has cross examined.

Mr. Barshay: I have been informed by Mr. Rosenthal with respect to Capone there will be no cross-examination.

The Court: Mr. Rosenthal will have to make his own announcement.

Mr. Fischbein: Your Honor, there is no cross-examination on behalf of defendant Louis Capone. At this time, if your Honor pleases, I respectfully move that this Court instruct the jurors to disregard the testimony of this witness up to the present time on the ground that her testimony is not any way binding upon the defendant Louis Capone.

932

The Court: The Court is tired of saying that the jury will be instructed at the conclusion of the trial. That must not be asked every minute.

933

Mr. Fischbein: I respectfully except.

Mr. Barshay: Now may I press my question?

Mr. Turkus: As to that question I object. It is improper re-cross examination. (Pending question read by the reporter.)

The Court: Sustained. We have been all over that.

Mr. Barshay: This is not re-cross, sir. It is further cross.

The Court: No.

934

Estelle Rosen—For People—Cross

Q. At any rate, were you told by Mr. Cooper that Mr. Buchalter at that time was in Europe?

Mr. Turkus: Objected to.

The Court: You may answer that.

A. No, he just told me to go to see him.

Q. Did you go to see him? A. I was promised but was never taken.

Q. Madam, did you personally go to see him?

935

A. I did not.

Q. You knew where his place of business was, did you, Mr. Buchalter's place of business was?

A. I did not.

Q. Did your husband tell you it was in the City of New York? A. I do not know where his place of business was.

Q. Did you ask anyone where his place of business was? A. I asked Mr. Rubin. He told me he will take me to see him.

Q. Of your own accord, madam, did you make any effort to go to his place of business? A. I could not go myself.

936

Q. Did you go? A. I tried to.

Q. Mr. Buchalter never refused to see you, did he? A. Oh, no.

Mr. Barshay: That is all.

Mr. Turkus: Thank you.

Mr. Talley: May I have a further question of this witness?

By Mr. Talley:

Q. Mrs. Rosen, do you remember that this was a warm night that you have been speaking of?

A. Particular warm night.

Q. And in that neighborhood it is not unusual to see men in their shirt sleeves, is it? A. No.

Q. And this candy store that you had had an open window? A. That is right.

Q. Leading out to the street? A. That is right.

Q. And you saw many people pass that night? A. That is right.

Q. In their shirt sleeves; is that correct? A. That is right.

Q. There was nothing unusual in anybody purchasing one cigarette in your store at a time, was there? A. No.

Q. That was quite the common practice of people, buying one cigarette? A. That is right.

Q. In your store, is that right? A. Yes.

Mr. Talley: That is all.

Mr. Turkus: Harry Regenbogen.

Mr. Talley: If your Honor pleases, will your Honor direct that this witness be kept within call until you definitely and finally pass upon the matter of my application for Grand Jury minutes? I am asking you if you will look at 257 N. Y., page 54, *Peo. v. Miller*, on this subject, because if your Honor changes your ruling I will have to bring her back,—*Peo. v. Miller*, 257 N. Y. 54, at page 57.

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Harry Regenbogen—For People—Direct

HARRY REGENBOGEN, residing at 451 Miller Avenue, Brooklyn, New York, called as a witness on behalf of The People, and being first duly sworn, testified as follows:

The Court: I am familiar with this, and that is the reason I indulged as I did. The Court has fully complied with this requirement. *Proceed.*

941

Mr. Talley: Take an exception to your Honor's ruling on that.

Direct examination by Mr. Turkus:

Q. Mr. Regenbogen, did you state to the stenographer that you reside at 451 Miller Avenue, Brooklyn? A. Yes, sir.

Q. Are you married, sir? A. Yes, sir.

Q. And do you live there with your wife and family? A. Yes, sir.

Q. In the year 1936 were you in business? A. Yes, sir.

942

Q. What business were you in? A. Grocery

Q. Speak up. A. Grocery and dairy.

Q. Where did you have your grocery store? A. 725 Sutter Avenue.

Q. And where is 725 Sutter Avenue? A. Sutter Avenue corner Bradford Street.

Q. Is that Brownsville? A. I beg pardon?

Q. Is that what they call Brownsville? A. East New York.

Q. How many years did you have a grocery store at 725 Sutter Avenue? A. Over ten years.

Q. Are you in business now? A. Yes, sir.

Q. What business are you in now? A. Same business.

Mr. Cuff: Objected to, incompetent.

The Court: Overruled.

The Witness: Same business.

Q. Where is your place of business now? A. 772 Miller Avenue.

Q. In September, 1936, was your grocery store at 725 Sutter Avenue, Brooklyn? A. Yes, sir.

Q. On Sunday, September 13, 1936, what time did you open up your grocery store? A. About half past six.

944

Q. In the morning? A. In the morning.

Q. At the time that you arrived at your grocery store at half past six in the morning, did you notice the Rosen candy store? A. Well, the store was closed.

Q. After you opened your store, did you do certain things inside the store? A. Yes, sir.

Q. How long had you had the store open when you heard something? A. It was about fifteen or twenty minutes.

Q. What did you hear? A. I heard some shooting.

945

Q. When you heard the shooting, what did you do? A. I did not pay much attention to it. I did not think it something wrong. I thought it something outside in the street from some machine tires.

Mr. Talley: We do not hear you.

Mr. Turkus: You will have to speak up.

Mr. Cuff: I move to strike out all except, "I did not pay much attention to it."

The Court: Overruled.

Mr. Cuff: Exception.

946

Harry Regenbogen—For People—Direct

Q. Tell me very loud. Try to have me hear you over here. What did you do? A. All right.

Q. Talk to me now. Tell me, what did you do when you heard the shooting? A. I was busy with my things inside the ice box and I tried to straighten out everything in the morning to be ready for business.

Q. All right. You said you were near your ice box doing something when you heard a noise like shooting? A. Yes.

947

Q. When you heard the noise like shooting, what did you do? A. Did not do anything.

Q. Did you walk out of your store? A. No, not at all.

Q. When did you go out of your store, how long after the shooting? A. Quite a few minutes.

Q. At that time when you walked out of your store after you heard the shooting, what did you have on you? What did you wear? A. An apron.

Q. What was the color of the apron? A. White apron.

948

Q. When you got out into the street what did you see? A. I did not see anything in the street when I got out. I tried to look around to see something, but I did not see.

Q. Did you see a man in the street?

Mr. Cuff: Object to that as leading.

A. No, sir.

The Court: Overruled.

Mr. Cuff: The answer is in now.

Harry Regenbogen—For People—Direct

949

Q. Do you know a man by the name of Louis Stamler? A. Yes, sir.

Q. Did you see him? A. Yes, sir.

Q. Did you talk to Stamler? A. He tried to talk to me.

Q. He started— A. He saw me.

Mr. Fischbein: That is objected to.

The Court: Overruled.

Mr. Fischbein: Anything that was told to him by another party.

950

The Court: Are you questioning the Court?

Mr. Fischbein: Yes, your Honor.

The Court: Is the Court a witness?

Mr. Fischbein: No, I am merely calling your Honor's attention.

The Court: I am calling attention to the fact the Court has ruled upon something other than that. Apparently you do not understand what is being asked.

Q. Go ahead. What were you saying? A. I looked around in the street and I did not see anyone, but Mr. Stamler noticed me and he told me—

951

Mr. Talley: I object.

The Court: He told you something.

The Witness: He told me to look around in the store.

Mr. Talley: I object to what Stamler told him, if your Honor pleases, and move to strike out whatever it was the witness said.

952

Harry Regenbogen—For People—Direct

The Court: Strike it out. You want to find out what he did and what he saw?

Mr. Turkus: That is right.

The Court: Get right down to it.

Mr. Turkus: That is what I am trying to do, but the witness does not speak English as properly as some of the counsel do. It may be a little difficult to extract it from him.

The Court: We all understand that.

953

Q. You say you saw Stamler. Did you see him? A. Yes.

Q. Without telling me what he said, did he say something to you? A. He said to me to look—

Mr. Rosenthal: I object.

Q. Don't tell me what he said, but just tell me yes or no: Did you say something to Stamler or did Stamler say something to you? A. As I remember, Stamler said something to me.

954

Q. After Stamler spoke to you, what did you do? A. I turned around to the store.

Q. What store? A. To the candy store.

Q. Did you walk into the candy store? A. No, sir.

Q. Did you look into the candy store? A. I did look when Stamler told me.

Q. When you looked into the candy store what did you see? A. I saw Rosen laying dead.

Mr. Turkus: I ask that this photograph be marked for identification.

Harry Regenbogen—For People—Direct

955

(Photograph marked People's Exhibit A for identification.)

Q. Mr. Regenbogen, I show you People's Exhibit A for identification and ask you if that is what you saw when you looked into the candy store.

Mr. Rosenthal: I object to that—

A. Yes, sir.

956

Mr. Rosenthal: —if your Honor pleases, upon the ground that that is not the proper method of proving a photograph.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Turkus: People's Exhibit A for identification is offered in evidence.

Mr. Talley: I object to it, if your Honor pleases. I see no possible aid to the jury that that can be. Let me see it, please.

957

Mr. Turkus: You just said you see, it could not be any aid, without looking at it.

Mr. Talley: I say that that photograph is not necessary on the proof of the People's case, is only presented for the purpose of inflaming the jury. There is no question about the man being found dead in that store, in that place, and there is no necessity for putting this photograph on record.

The Court: Overruled. Let me see it.

Mr. Talley: Exception.

958

Harry Regenbogen—For People—Direct

The Court: Before it is marked in evidence, counsel for defense will be permitted to cross-examine on this point.

Mr. Talley: Have to see the picture first.

Mr. Turkus: Your witness.

The Court: Wait a minute.

Mr. Barshay: May I know from the Court whether or not this was offered for identification or in evidence?

959

The Court: It was marked for identification. It has been offered in evidence.

In view of the scanty character of the witness's answer in identifying the picture, the Court is permitting counsel for defense to cross-examine as to the accuracy of the identification of the picture before it will be marked in evidence.

Mr. Barshay: Counsel declines to cross-examine on that point. He has an objection addressed—

The Court: How about counsel for Weiss?

960

Mr. Barshay: —to the introduction of this picture in evidence.

Mr. Talley: I have no cross-examination. The objection remains the same.

The Court: How about counsel for Capone?

Mr. Rosenthal: I have no questions, your Honor.

The Court: (to the reporter) Mark it in evidence.

Mr. Barshay: May I note my exception?

Mr. Talley: Exception.

(People's Exhibit A for identification received and marked People's Exhibit 1 in evidence.)

Mr. Barshay: May I direct an objection to its introduction in evidence?

The Court: I thought you had.

Mr. Barshay: I did not because I was not permitted to.

The Court: The Court has not forbidden you to.

Mr. Barshay: I did not say you had, but by virtue of the questions—

The Court: Objections were made and overruled.

Mr. Barshay: I did not make any, sir.

The Court: Then make yours.

Mr. Barshay: I object to it on the ground that it is highly inflammatory and prejudicial.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: Any other counsel object?

Mr. Rosenthal: I reiterate the objection on the ground it is in no wise binding upon my client and it is highly inflammatory and prejudicial.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Turkus: May I exhibit People's Exhibit 1 to the jury?

The Court: Pass it around.

Mr. Turkus: The witness is offered for cross-examination.

964

Louis Stamler—For People—Direct

Mr. Barshay: No cross on behalf of defendant Buchalter.

Mr. Talley: No cross on behalf of defendant Weiss.

Mr. Rosenthal: None on ~~behalf~~ of defendant Capone.

965

LOUIS STAMLER, residing at 720 Sutter Avenue, Brooklyn, New York, called as a witness on behalf of The People, and being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Mr. Stamler, what is your business or occupation? A. Tailor.

Q. And how long have you been a tailor? A. About thirty years.

Q. Are you married, Mr. Stamler? A. Married.

966

Q. And do you live with your wife and family? A. Yes, sir.

Q. Where do you live? A. 720 Sutter Avenue, Brooklyn.

Q. Is that near Bradford Street? A. Yes, sir.

Q. Mr. Stamler, on Sunday, September 13, 1936, in the morning, do you recall what time you awoke? A. It was about a quarter to seven I woke up and went to my boy's second room to my boy to wake him up.

Q. You will have to speak loudly.

Mr. Cuff: I move to strike out all except "about a quarter to seven" as not responsive.

Q. Did you say that about a quarter to seven you woke up and you went into your son's room?

A. To wake him up, he should go to work in the grocery store.

Q. When you were in your son's room waking him up to go to work, did you hear something?

A. I heard a shot. I went in back to my room to look out of the window.

Q. When you were looking out of the window, what did you see? A. I saw a machine pull away from the store, the candy store, and a man was laying on the floor all bloody. Then after—

968

Q. Wait. Slowly. You say you looked out of your window and you saw a machine pull away from in front of the candy store? A. Yes, sir.

Q. And that when the machine got away from the candy store you saw a man lying on the floor all bloody? A. Yes, sir.

Q. When you saw that, did you continue to look at the automobile? A. Then I looked after the machine and took down the license number, plate number, from the machine.

Q. Did you memorize the license number?

969

Mr. Cuff: Object to leading the witness, if your Honor pleases.

A. Yes.

Mr. Cuff: Wait a minute.

The Court: Overruled.

Mr. Cuff: Exception.

Q. Did you tell me, before the objection, that you had memorized the license number?—A. Yes, sir.

970

Louis Stamler—For People—Direct

Q. Where did you see that automobile go? A. It was turned into Wyona Street.

Q. Turned into Wyona Street? A. Sutter Avenue to Wyona Street.

Q. Is Wyona Street the next street from Bradford? A. Yes, sir.

Q. After you memorized the number and saw where that automobile went, what did you do? A. I dressed myself, put on pants and shoes, and I went down to that candy store.

971

Q. Did you dress quickly. A. Very quick.

Q. When you went downstairs, did you see a grocer there, Mr. Regenbogen, the man that wore the white apron? A. He was outside.

Q. When you went downstairs what did you do? A. I saw the man laying and I started to holler. I was screaming, "Police! Police!" Then I saw a cop come down, was between my street and Wyona Street. He came down and I was calling—

972

Q. Wait, Mr. Stamler, not so fast. Before you ran out into the street and started to scream, "Police!" did you look into the candy store? A. Yes.

Q. When you looked in the candy store did you see this, People's Exhibit 1 in evidence (handing exhibit to witness)? A. Yes.

Q. After you saw the man did you know who he was? A. I know him.

Q. What was his name? A. Mr. Rosen.

Q. And was he the proprietor of the candy store? A. Yes.

Q. After you saw Rosen, as you have seen him now in this picture, Exhibit 1, did you then

Louis Stamler—For People—Direct

973

run out into the street? A. Yes, and then back. I could not go in.

Mr. Talley: We cannot hear.

Mr. Turkus: You'll have to talk up.

Q. After you saw Rosen laying there dead in the store, did you run out into the street? A. Yes, I ran out and started to holler, "Police!"

Q. And when you holle:ed "Police!" did you wave your hands? A. Yes, then I saw the cop come and I called him, "Quick, quick, there's a murder."

974

Q. Did the policeman come over to you? A. Yes, he come.

Q. When the policeman came over to you, without telling me what you said to him, did you talk to him? A. Yes.

Mr. Turkus: Will you bring in Patrolman Cappadora?

(Patrolman Guglielmo Cappadora, Shield No. 17733, enters the court-room.)

975

Q. Do you recognize this police officer? A. Yes, this is the one.

Q. Is that the one? How long after you heard the shots was it before you saw the patrolman, can you tell us, about how many minutes? A. It took about five or seven minutes.

Q. After you spoke to this patrolman whom you have identified as Patrolman Cappadora, did you see the patrolman do something? A. (no answer)

Q. Did you see the policeman go into the candy

976

Louis Stamler—For People—Direct

store? A. He went to the candy store and looked and then he went somewhere.

Q. Let me ask you this: Did you tell Cappadora, the patrolman, the number of the car you had memorized? A. Yes, I told him.

Q. And did you give him a description of the car? A. Told him it was a dark car.

Q. And did Patrolman Cappadora have you remain at the scene of the shooting until police officials and detectives came there? A. Yes.

977

Mr. Turkus: (to reporter) Will you mark that large photograph for identification?

(Photograph marked People's Exhibit B for identification.)

Q. Mr. Stamler, will you kindly arise, turn around, and look at that picture, People's Exhibit B for identification, and tell me, does that show the Rosen candy store as you saw it that Sunday? Is that it? A. Yes.

978

Mr. Turkus: It is offered in evidence.

Mr. Talley: No objection.

(People's Exhibit B for identification received and marked People's Exhibit 2 in evidence.)

Mr. Turkus: For convenience in handling, I offer a small-sized photograph, People's Exhibit 2 in evidence, to be received as 2-A, that for the convenience of the jury.

Louis Stamler—For People—Direct

979

(Photograph received and marked People's Exhibit 2-A in evidence.)

Mr. Talley: Is it a duplicate?

Mr. Turkus: Yes.

Mr. Cuff: That is the regular picture and that is the enlargement.

Q. The house that you house that you live in, Mr. Stamler, is it directly across the street from the Rosen candy store? A. Yes, sir.

980

Mr. Turkus: I ask that this be marked for identification.

(Photograph marked People's Exhibit C for identification.)

Q. Mr. Stamler, I show you People's Exhibit C for identification and ask you if that is a picture of the house you live in and the one that you lived in Sunday, September 13, 1936. A. Yes, sir.

981

Mr. Turkus: It is offered in evidence.

(People's Exhibit C for identification received and marked People's Exhibit 3 in evidence.)

The Court: This is the Bradford Street side?

Mr. Turkus: At Sutter Avenue, one side is the Rosen candy store, that is People's Exhibit 2; the other side is the Stamlers' house, across the way. The third picture will clear up the situation.

982

Louis Stamler—For People—Direct

Q. This picture, People's Exhibit 3, which is the house that you told us you live in, what floor, will you point your finger on the floor where you lived and point it so the jury can see it? A. (Witness indicates.)

Q. One flight up? A. One flight up.

Mr. Turkus: Indicating one flight up on People's Exhibit 3. I ask this photograph be marked for identification.

983

(Photograph marked People's Exhibit D for identification.)

Q. I show you People's Exhibit D for identification and ask you if that is the view through your window when you look across the street at the Rosen candy store. A. Yes.

Mr. Turkus: It is offered in evidence.

Mr. Talley: Is this as the premises existed in September, 1936?

984

Mr. Turkus: No, that is the way it was in September, 1936. That is the way it is now.

Mr. Talley: I object to it, if your Honor pleases, solely because it is not a photograph of the structure as it appeared in September, 1936.

Mr. Turkus: The photograph is offered, your Honor, to give the jury the visual picture of what you see through Stamler's window.

The Court: I take it it is to show what opportunity there was to see the car and

the license plate number from that window.

Mr. Talley: That photograph does not indicate that.

The Court: Pardon me?

Mr. Talley: I beg your pardon.

The Court: For the witness to see from his window into the inside of the store across the street and to see the body lying on the floor.

Mr. Talley: That photograph does not show what anybody could see from the other side of the street.

The Court: It shows only the relative placing of the building, doesn't it?

Mr. Turkus: That is all.

The Court: Let me see it.

Mr. Talley: The photograph can show things that the human eye did not see.

The Court: Is this photograph taken from the inside of this witness's premises?

Mr. Turkus: Yes.

The Court: Then the frame—

Mr. Turkus: The window frame.

The Court: This dark business on the two sides is the window frame?

Mr. Turkus: That is right.

The Court: And the sole purpose is to show the relative location of the two buildings and opportunity to see what he claims to have seen?

Mr. Turkus: That is right.

The Court: So that the details, in so far as they have been changed, are of no consequence in the case?

Mr. Turkus: None at all.

988

Louis Stamler—For People—Direct

The Court: The picture is received in evidence. Objection overruled.

Mr. Talley: Exception on the ground it is not an accurate representation of the premises as they existed in September, 1936.

The Court: As long as the location of the building has not changed it stays in evidence

989

(People's Exhibit D for identification received and marked People's Exhibit 4 in evidence.)

Q. Mr. Stamler, will you turn around and look at the big picture, People's Exhibit 2? On Sunday was the hat store next to the candy store, that Sunday when Rosen was shot? A. Yes.

Q. And was the grocery store there that Sunday? A. Yes.

Q. Now there are different stores there, is that right, alongside of the candy store? A. Grocery store now.

990

Q. And what kind of a store is the next store? A. Supply store, electric supplies.

Q. Other than that, is the building in the same condition as it was at that time? A. Yes.

Q. Same place? A. Same place, only the stores are changed.

Q. But the candy store is still a candy store? A. Same store.

The Court: (to jury) Don't discuss it, gentlemen; just look at it.

Mr. Turkus: The witness is offered for cross-examination.

Guglielmo Cappadora—For People—Direct

991

The Court: First, on behalf of the defendant Buchalter.

Mr. Barshay: No cross.

Mr. Talley: No cross.

Mr. Rosenthal: No cross.

GUGLIELMO CAPPADORA, Shield No. 17733, attached to Motorcycle Precinct No. 2, New York Police Department, called as a witness on behalf of The People, and being first duly sworn, testified as follows:

992

Direct examination by Mr. Turkus:

Q. Patrolman Cappadora, are you a member of the uniformed police force of the City of New York? A. Yes, sir.

Q. And what is your present assignment? A. Motorcycle Precinct No. 2.

Q. How many years have you been attached to the uniformed police force of the City of New York? A. Going on eleven years.

993

Q. Are you a member of the Honor Legion of the Police Department?

Mr. Cuff: I object to that.

The Court: Overruled.

Mr. Cuff: Exception.

A. Yes, sir.

Q. And is that cross bar that you wear over your shield the insignia of the Honor Legion?

Mr. Cuff: Objected to, incompetent, irrelevant, immaterial.

994 *Guglielmo Cappadora—For People—Direct*

The Court: Overruled.

Mr. Cuff: Exception.

A. Yes.

Q. When did you receive designation to the Honor Legion of the Police Department?

Mr. Barshay: I object to it. It is not competent with respect to this case.

The Court: Sustained.

995 Q. Did you say your present designation is Motorcycle Squad No. 2? A. Yes, sir.

Q. On September 13, 1936, Patrolman Cappadora, where were you assigned or detailed? A. I was working in the 75th Precinct, assigned to Post 20 $\frac{1}{2}$ and 19, that is Sutter Avenue.

Q. Where is the 75th Precinct located? A. Miller and Liberty.

Q. How many years had you been in that precinct, the 75th? A. About eight years.

Q. On Sunday, September 13, 1936, up to that time how many years had you been in the 75th Precinct? A. A little over five.

996 Q. On Sunday, September 13, 1936, what was your tour of duty? A. I was working 12 midnight to 8 A. M. in the morning.

Q. And did you say you were working post 20 $\frac{1}{2}$ and 19? A. Yes, sir.

Q. Had you previously been assigned to those posts before? A. Yes, sir.

Q. How many years had you worked those specific posts? A. For about three years on and off.

Q. On Saturday night when you went to work,

did you pass that candy store shown on People's Exhibit 2 in evidence? A. Yes, sir.

Q. About what time Saturday night did you go by? A. About 10 or a little after.

Q. Did you stop at the candy store? A. Yes, sir.

Q. Did you there see the proprietor, Joseph Rosen? A. Yes, sir.

Q. What was your occasion for stopping there? A. I stopped in and bought a pack of cigarettes.

998

Q. Was that on your way to work? A. On my way going to work.

Q. You say you worked from 12:01 Sunday midnight all the way down to 8 o'clock in the morning on Sunday? A. Yes, sir.

Q. During the early hours of Sunday morning did you have a particular task to do in connection with traffic lights? A. Yes, sir, I was supposed to put them on.

Q. Approximately what time were you supposed to put those traffic lights on? A. Well, they are supposed to be on by 7 in the morning, so I started a little earlier, about a quarter to.

999

Q. Had you previously put those lights out? A. At 3 in the morning.

Q. And you say about a quarter to seven you started to relight the lights? A. Yes, sir.

Q. While you were performing your duty, did something occur on Sutter Avenue which attracted your attention? A. Yes, sir.

Q. About what time was it? A. I would say around 6:50 or 6:55 A. M.

Q. What attracted your attention? A. Well,

1000

Guglielmo Cappadora—For People—Direct

I saw—I was walking west on Sutter Avenue, I mean east on Sutter Avenue—

Q. Between what streets were you? A. I was between Wyona Street and Vermont Street on Sutter Avenue.

Q. And were you walking in the direction of that Rosen candy store shown on People's Exhibit 2? A. Yes, sir.

1001

Q. What did you notice? What did you see? Well, I saw a man in the roadway hollering "Police! Murder! Help!" So he was looking up my way, calling me, so I immediately ran toward him and pulled my gun out to find out what was wrong, and he told me, "In the candy store a man is dead."

Q. Did you look into the candy store? A. Yes, sir.

Q. Did you see the proprietor in there? A. Yes, sir.

Q. Was he dead? A. He was lying on his back. I figured he was dead.

1002

Q. Look at People's Exhibit 1 and tell me if that is what you saw when you looked in. A. Yes, sir.

Q. Did you talk to the man who was yelling "Police! Murder!?" Did you talk to him? A. Yes, sir.

Q. Do you know his name? A. Yes, sir.

Q. What is his name? A. Stamler.

Q. Was he the witness who preceded you? A. Yes, sir.

Q. Did you question Stamler? A. I did.

Q. After you questioned Stamler, what did you do? A. Well, he gave me the licence number of the car, and he told me how many men—

Mr. Cuff: I object to what he said to him. Move to strike out the answer.

Mr. Turkus: Consented to.

The Court: Sustained.

Q. Tell this jury, after you spoke to Stamler, exactly what you did. Did you get on the telephone? A. I ran into the back, into the candy store, and I got on the telephone and called up T. B.

Q. The jury do not know what T. B. is. A. The Telegraph Bureau in the Police Department.

1004

Q. That handles all the alarms? A. Yes, sir.

Q. And radio and all other communications for the Police Department? A. Yes, sir.

Q. What alarm did you broadcast? A. I broadcast an alarm for a car L-16-67, and then I immediately, right after that, I notified the station house of what happened.

Q. What did you say in connection with L-16-67, specifically, the number of occupants? A. I says three or more men in a black sedan, and I gave them the license number and I told them which way they were proceeding at the time.

1005

Mr. Barshay: I move to strike out as not binding on the defendants.

The Court: Overruled.

Mr. Barshay: Exception, sir.

Q. Now will you describe what you saw when you saw this man, the proprietor, on the floor? A. Well, when I walked in the candy store I saw the proprietor laying on his back with his

1006

Guglielmo Cappadora—For People—Direct

arms outstretched, his face facing the ceiling and his eyes wide open at a sort of an angle, his feet facing to the right of the door of the candy store and his head facing towards the rear of the toilet on the right, on this side, and a puddle of blood on the floor and a lot of newspapers.

Q. How were his legs? A. Wide apart, straight up.

1007

Q. Did you see where the blood was flowing from the body, in which direction?

Mr. Barshay: I object to it. It is prejudicial.

The Court: Overruled.

Mr. Barshay: Exception.

A. There was the blood on the left side of his shoulder and arm, and it was going toward the soda fountain to the left of him, quite a puddle of it, and a lot of newspapers in this blood, and there was blood by his back.

1008

Q. After you telephoned the alarm for the automobile with the license number that you gave us and the occupants that you recited, did you keep Mr. Stamler with you? A. Yes, sir.

Q. Did you make any further report? A. Well, I tried to find out—

Q. No, you cannot tell us that. Did you make any further report to anybody in the Police Department? A. I notified the station house and told them what had happened, and immediately, right after that, the radio cars came down, a sergeant who was on patrol and a sergeant who was turning out for the 8 to 4.

Guglielmo Cappadora—For People—Direct

1009

Q. Did the sergeant, your commanding officer from the 75th Precinct, respond? A. Yes, sir.

Q. How long after you got there was it before he arrived? A. Oh, about three minutes.

Q. Did you maintain a guard of the premises? A. Yes, sir.

Q. Did you permit anybody to touch anything in the premises? A. No, sir.

Q. Now, at some time after your commanding officer arrived, did an ambulance arrive? A. Yes, sir.

1010

Q. Was there an interne or ambulance surgeon on the ambulance? A. There was.

Q. Did he look at Joseph Rosen? A. Just looked at him.

Q. And what did he respond? A. He said he was D.O.A.

Q. What does "D.O.A." mean? A. "Dead on arrival."

Q. Did the detectives from the Photo Gallery arrive while you were there? A. Yes, sir.

Q. Did they take pictures in your presence? A. They did.

1011

Q. Subsequently did the Medical Examiner of the City of New York arrive? A. He did, right after the ambulance doctor arrived.

Q. Until the Medical Examiner arrived, did you permit anybody to touch or disturb anything either in connection with the body or with the premises? A. No, sir.

Q. Can you fix approximately when the Medical Examiner arrived? A. I would say around 8:30, like that.

Q. Did the Medical Examiner make an inspection of the corpse? A. He did.

1012

Guglielmo Cappadora—For People—Direct

Q. Did the Medical Examiner order the removal of the body to the Kings County Morgue?

A. He did.

Q. Were you there when the body was taken out of that candy store and sent down to the morgue? A. I was.

Q. Did you assist in putting the body into the morgue wagon? A. I did.

Q. Were you ordered to accompany the body to the morgue? A. I was.

1013

Q. Did you do so? A. I did.

Q. What time did the body arrive at the morgue? A. I would say around 11 o'clock.

Q. Did you there see the body of Joseph Rosen in the Kings County Morgue, on a slab? A. I did.

Q. Who identified the body to the Medical Examiner? A. I did.

Q. Do you remember whether Harold Rosen also identified the body? A. I don't get you.

Q. Harold Rosen, did he also identify the body? A. He did.

1014

The Court: What Medical Examiner?

The Witness: Marten.

Q. Were you present when the Medical Examiner, after identification of the body, commenced the autopsy? A. I was.

Q. Did you stay there long? A. Could not stand it, and I walked out.

Mr. Turkus: Your witness.

Mr. Barshay: No cross.

Mr. Rosenthal: No cross.

Mr. Cuff: No cross.

M. Edward Marten, M.D.—For People—Direct 1015

M. EDWARD MARTEN, M. D., residing at 152 Lenox Road, Brooklyn, New York, called as a witness on behalf of The People, and being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Dr. Marten, are you a physician and surgeon duly licensed to practice your profession in the State of New York? A. Yes, sir.

Q. And how many years have you been so licensed? A. About twenty-five. 1016

Q. Have you continuously practiced and engaged in the practice of your profession? A. Yes, sir, I have.

Q. What position do you hold with the Medical Examiner's office of the City of New York? A. I am the Deputy Chief in charge of Brooklyn and Queens Counties.

Q. And is your title known as Deputy Chief Medical Examiner of the City of New York? A. Yes, sir, that is correct.

Q. And how many years have you held that office? A. More than twenty years. 1017

Q. Has the office of the Medical Examiner of the City of New York any connection whatsoever with the District Attorney's office? A. No, sir, it has not.

Q. In the twenty years that you have been attached to the Medical Examiner's office, approximately how many autopsies have you performed? A. More than four thousand.

Q. Now, Doctor, on Sunday, September 13, 1936, did you go to premises 725 Sutter Avenue, a candy store? A. I did, yes, sir.

1018 *M. Edward Marten, M.D.—For People—Direct*

Q. And did you there see a body in that candy store? A. I did, yes, sir.

Q. Was that body subsequently identified to you? A. Yes, sir.

Q. Who made the identification of the body? A. The son of the deceased, Harold Rosen, also a nephew by the name of Schraner.

Q. And was the body also identified by a police officer by the name of Cappadora? A. That is correct, yes, sir.

1019 Q. Will you tell the Court and jury what you saw in connection with that body that was identified to you, first telling us who identified the body as the corpse of what individual? Is that clear to you? A. His son identified the body.

Q. As that of his father? A. At the Kings County Morgue, and also a man that said he was his nephew. His name was Otto Schraner.

Q. The name of the deceased? A. Was Rosen. May I refresh my recollection from the records?

Q. I have no objection. A. The deceased's full name was Joseph Rosen.

1020 Q. Directing your testimony now to the inspection and findings that you made at the scene of the homicide— A. Yes, sir.

Q. —tell the Court and jury what you saw. A. I saw a man partly clad in what appeared to be the usual, you understand, small candy shop, lying flat on his back. He was partly dressed. The clothing upon him—do you want?

Q. Yes, give us an entire description, loudly, so that everybody on the jury can hear it. A. Yes. I arrived at this place somewhere around 8:45 in the forenoon of that day, on the 13th of September, and found a man lying prone, on his

M. Edward Marten, M.D.—For People—Direct

1021

back, his body being frankly warm, way down to his extremities, that is to say, he had no opportunity to chill, showing that he had been dead but a short time, relatively speaking.

Q. Will you keep your voice up, Doctor? A. Within an hour or two. He had on a white woven Oxford weave white shirt with collar attached. The collar band had the name "Rosen" on it, and a rather blurred, hard-to-make-out laundry mark. It bore the label "Fox Haberdashery, Philadelphia, Reading, and Norristown." This shirt was badly bloodstained, saturated with blood in its upper portion in front and back and also the sleeves. There were bullet holes present corresponding to those found in the chest, which I shall afterward describe.

1022

There was a white apron such as you might see butchers wear, a string attached at the upper part of it.

He had a pair of cotton shorts on with a blue stripe. This garment was marked "Pepperell Fabrics."

He had an athletic undershirt, which was also bloodsoaked, and marked, "B.V.D. for best retail trade." In the back the shirt was torn and had six holes in it. There were two what might have been bullet holes around the left armhole.

1023

He had a pair of Oxford gray serge trousers bearing the following laundry marks: "315—657—162—743—and 5."

He had a black leather belt with a metal buckle.

He had a pair of gray garters with blue and red stripe.

He had two white cotton socks and a pair of brown slippers.

1024 *M. Edward Marten, M.D.—For People—Direct*

Q. What did the inspection of the body disclose, Doctor? A. The inspection showed a white male adult who measured 5 feet 5 inches. His approximate weight was about 175 pounds. He was stocky, heavily built, with a broad, short stubby nose—I would call it.

He had a little opacity or scarring in one of the eyes. This was on the right side.

1025 Rigidity, that is to say, the rigor that develops after death, was already setting in. It was fairly marked.

Q. Did you order that body removed, that corpse removed, to the Kings County Morgue? A. I did, yes, sir.

Q. And was it brought to the Kings County Morgue for autopsy? A. Yes, that was the purpose.

Q. And was it there where identification was made of the body? A. That is quite correct.

1026 Q. Will you tell the Court and jury what you did on autopsy and what you found? A. An autopsy is essentially a minute dissection of a body, the technique of which I won't go into. It comprises essentially an outward inspection with a description of the entire body as to height, weight, any special peculiar marking, and then the technique of the autopsy is very fine, what you are doing at a certain time.

The Court: You don't need that. What did you find as bearing on the cause of death?

The Witness: I just wanted to say that there is a stenographer present at all times while I am doing the work and telling him

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what I am doing and what I am finding and making the proper notations on his record. That is essentially the autopsy.

Q. That autopsy is performed in the regular course of your business as Deputy Chief Medical Examiner of the City of New York? A. Yes.

Q. And it is done for a specific purpose? A. To get all the information I can about the body.

Q. Right. Tell us what you found on autopsy.

A. Well, I have described the man to you. Now I go on to tell you what special markings I found on this man.

1028

This particularly was noted, because of the marks of violence on this man, situated—

Q. You will have to speak more loudly.

Mr. Cuff: We cannot hear you, doctor.

The Witness: Excuse me. I will see that you hear me. There were seventeen bullet holes on this man.

Q. Would you call those entrance and exit bullet holes, doctor? A. There were a total of seventeen, some of which were entrance and others were exit. If you will permit me to refer to my records, I will give you the exact location of each of the wounds, whether they were or were not entrance or exit wounds, and then give you the tract and the corresponding exit and entrance with which to hook up. Merely for purpose of description I label them 1, 2, 3, and so on. No. 1 was an entrance wound. This was situated on the left side of the face at a level that was one-quarter inch below the ear

1029

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canal on the left side and one and one-quarter inches anterior to it. The ear canal is merely the hole in your auricle or ear. This was on the left side. It was one and one-quarter inches below—one-quarter inch below this line and one and a quarter inches anterior to it, roughly where my index finger is (indicating). That was an entrance. Bullet hole No. 2 was situated on the lower margin of the mandible or lower jaw—here is the lower margin of the jaw—on the left side, three inches to the left of the midline—that is the position about where my finger is now (indicating).

1031

Q. Was that an entrance? A. Yes, sir. No. 3 was another entrance which was situated on the left side of the neck, two and a half inches to the left of the midline, on the level with the upper border of the Adam's apple—position about here (indicating). No. 4 now was an exit wound. This was situated on the back of the neck one inch below and one inch to the right of the bony prominence on the back known as the occipital protuberance. That is the position where my finger is now (indicating) one inch to the right and one inch below. That would be a point where my finger is now. Bullet wound No. 5 was an entrance. This was situated on a level with the sternal notch, that is the concavity above the breast bone where my finger is now. It was situated at this level and two and three-quarters of an inch to the left—position where my index finger is now. This tract was probed and it was found that it passed from before backwards and somewhat mesial or toward the midline, making its exit. Bullet

1032

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hole No. 6 which was situated at a point that was on the level with the seventh cervical vertebra and two inches to the left of the midline, the lowest one of these, which would correspond to a position right here on me (indicating) was where this bullet was located or this exit was located, two inches to the left of the midline. Bullet wound No. 7 was an entrance wound and this was situated on the anterior portion of the left shoulder, six inches to the left of the mid-sternal line and one and a half inches above the supra sternal notch. The supra sternal notch, as before described to you, is the concavity on top of the breast plate, and at a level that was one and a half inches above there and six inches to its left, position about here, indicating by my index finger, there was entrance wound No. 7. This was probed and it was found that the tract was from before backwards and toward the midline, making its exit at bullet wound No. 8, which was situated on the back of the shoulder at a point that was on the level with the seventh cervical vertebra and five inches to the left of the midline. Now I am going to get into a little difficulty.

1034

1035

Q. Use the court attendant. A. Thank you, sir. There is the seventh cervical and five inches to the left of the midline (indicating on court attendant). That would just about make the exit of that former. Bullet wound No. 9 was situated at a point that was six and three-quarter inches to the left of the midsternal line but on a level with the top of the breast bone. Bullet hole No. 10 was an entrance. This was situated in line with the anterior axillary fold

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and two inches below the highest point of the pit of the arm, the anterior axillary fold.

Q. Two inches below the highest point of the pit of the arm? A. That is easy enough to fix (indicating on court attendant). The fold is marked out by this muscle here, so it was in line with the fold of the muscle in front and two inches below the highest point of the pit of the arm, about that level. Bullet wound No. 11 was an entrance. It was situated on the

1037 anterior chest wall at a point four and a half inches below the level of the top of the breast plate and six inches to the left of the midline, four and a half inches below, six inches to the left of the midline. Bullet wound No. 12 was an entrance wound that was situated on the outer surface of the left forearm. Anatomically the outer and inner surfaces of the arm are designated in this way. A man is supposed to hold his hands outward like that (indicating). Anything you see in front is anterior and behind is posterior. This was on the posterior surface of

1038 the arm, on the left forearm, and this at the point that was three and three-quarter inches below the olecranon process, that is simply the funny bone, three and a half inches below that, a position about here (indicating). To this there was a corresponding bullet wound of exit, No. 13, that was found on the inner surface of the forearm at a point four and a half inches below the bend of the elbow. This caused a fracture of one of the bones of the forearm. Bullet wound No. 14 was an entrance wound and was situated on the anterior aspect of the left shoulder on a level with the notch on top of

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the breast plate and seven inches to the left of the midsternal line, position about where my finger is now. This particular bullet took a course from left to right and downward, left, right, and down, making its exit bullet wound No. 15 which was situated on the outer aspect of the arm at a point four inches below the acromion process, on this side. That simply means the highest, the overlapping arching bone that is over the shoulder joint is known as the acromion process, and four inches below that, on the outer side, was bullet hole No. 15. There were found two exit wounds on the back of this man, bullet wound No. 16 which was situated on a level with the first thoracic vertebra, that is this one below the cervical which I described before, and two inches to the left of the midline of the body. Bullet hole No. 17 was situated one-quarter inch to the left of the midline of the back on a level with the lower angle of the scapula or shoulder-blade. Perhaps I can show that better on you.

1040

The Court: That is near enough.

1041

The Witness: As near as I can make out, right there (indicating).

The Court: The cause of death was what?

The Witness: Bullet holes perforating the skull, brain and lungs.

Q. Doctor, on autopsy you traced the tract or course of the bullets, did you not? A. Yes, sir, I did.

Q. Let us take bullet No. 1, as you described, which had its entrance on the left side of the

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face, on a level a quarter of an inch below the line of the external auditory meatus on that side and an inch and a quarter anterior to it. That is labeled bullet hole No. 1, entrance? A. Yes, that is right.

Q. See whether that bullet did not come out at bullet hole 4 exit and trace the course for the jury how that bullet went from the left side of the face, how it went through the head, where it came out? A. Yes, sir. Bullet wound of entrance labeled 1 made its exit at bullet hole No. 4.

1043

Q. Will you put your two fingers, indicating to the jury on your own body, where the bullet entered and where it exited?

The Court: Is there going to be much more of that?

Mr. Turkus: Yes.

The Court: We will resume at the stipulated time.

Mr. Turkus: It will take another half hour at least.

1044

The Court: Ten o'clock tomorrow morning. Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it, keep your minds open. The jury may leave.

Gentlemen of the defense, subpoena duces tecum calls for August 4th, what do you want to do about that?

Mr. Cuff: Make it next Monday.

The Court: Change the date.

Defendants are remanded.

(Whereupon an adjournment was taken to Tuesday, October 21, 1941, at 10 a.m.)

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Brooklyn, N. Y., October 21, 1941.

TRIAL RESUMED

M. EDWARD MARTEN, a witness in behalf of The People, resumed the stand and testified further as follows:

Mr. Talley: If your Honor please, may I suggest that while any witness is on the stand who is not going to use the big chart (referring to exhibit on easel in back of witness chair), it should be removed? It has no place there unless a witness is going to use it.

1046

The Court. Will it be all right if it is just turned around?

Mr. Talley: Yes.

The Court: I don't know that it does any harm, but we will turn it around.

(Exhibit adjusted to the wishes of counsel.)

Direct examination (continued) by Mr. Turkus: 1047

Q. At the point of recess last night, if my memory serves me right, you had described the seventeen entrance and exit bullet holes in the corpse of Joseph Rosen, and you were indicating the course or track of Bullet No. 1, exiting at Bullet Hole 4; is that correct? A. Yes, sir.

Q. Will you indicate to the jury with your fingers where Bullet Hole No. 1, the entrance bullet, entered the victim, and where it emerged at Bullet Hole No. 4? A. The wound described as being situated in the front of the ear canal

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on the left side. This made exit at Bullet Hole No. 4. This was on the back of the neck one inch below and one inch to the right of the occipital protuberance. Course: left to right, backward, almost a horizontal course.

Q. (The Court) Through the brain? A. No, through the neck.

Q. Will you indicate to the jury the track or course of Bullet Wound No. 2, which was the entrance?

1049

The Court: I take it this is not in any way assuming the order of shooting, but is an arbitrary designation by numerals?

Mr. Turkus: That is true. Dr. Marten indicated that yesterday before recess.

The Witness: No. 2 was an entrance wound which had no corresponding exit wound.

Q. Will you show the jury on your face the entrance of Bullet Wound No. 2?

1050

Mr. Cuff: I object. I think that was all given yesterday by Dr. Marten.

Mr. Turkus: We are describing the course and track of the bullet.

The Court: If I recall correctly, yesterday the location of the points of entrance and exit were stated. I do not recall that the course of the bullets was stated.

Mr. Cuff: We cannot see any materiality, in view of what Dr. Marten says was the cause of death.

The Court: The Court is powerless to

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stop it unless it is incompetent and irrelevant.

The Witness: No. 2 had an entrance point at the lower margin of the mandible on the left side, 3 inches to the left of the mid line—on the left side, 3 inches posterior to the mid line.

Q. (The Court) Do you know the course of that bullet? A. The course of that bullet was from left to right, almost horizontally, and imbedded itself in the 4th cervical vertebra.

1052

Q. Meaning what? A. The bony spool, from the top downward the 4th in consecutive order, the top of which is No. 1.

Q. At the top of the spine? A. Yes, sir.

Q. Lodged in the back of the backbone? A. No, sir, in the neck, known as the 4th cervical vertebra.

By Mr. Turkus:

Q. I am referring to the entrance which you labeled the entrance of Bullet Wound No. 2 on the lower margin of the mandible, on the left side, 3 inches to the left of the mid line. I want you to follow the course of that bullet and see if it did not go from its point of entrance left to right and upward, passing on the right side through the brain and lodging itself in the plate of bone up in this region (indicating)—the right temporal muscle. A. Yes, sir; I indicated that Bullets 2 and 3 had no corresponding exits. Now, if we were to take No. 2—is that the next?

1053

Q. Yes? A. No. 2 took a course just as you

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pointed out, that is to say, from the point of entrance left to right and upward, passed through the skull and into the space on the right side, lacerating the brain, and found on the right side, on the inner side of the plate or bone that is adjacent.

Q. Would that about indicate the entrance and exit— That bullet was imbedded, wasn't it, in the temporal muscle? A. Yes, sir, on the right side.

1055 Q. Did you recover or extract that bullet from the temporal muscle on the right side of the victim when you performed your autopsy? A. Yes, sir.

Q. Have you that bullet in court? A. Yes, sir.

Q. Did you designate that bullet with any marking? A. Yes, sir, I marked it.

Q. What was the marking? A. "M".

Q. Is it "MM"? A. "MM", and another I recovered that I labeled "MR." "MM" was the one that passed through and mushroomed.

1056 Q. The one you recovered that entered in the jaw and you found lodged in the temporal muscle, having passed through the brain, which bullet is that? A. The mushroomed bullet.

Q. You have designated that mushroomed bullet— A. "MM", I believe.

Mr. Turkus: "MM", recovered on the autopsy, is now offered in evidence.

The Court: As each bullet is marked in evidence, put it in a separate envelope, a manilla envelope.

Mr. Turkus: Is there anything on the envelope you have (addressing witness)

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that should not be on that envelope? Can we use it?

The Witness: Yes, sir.

Mr. Turkus: I see no objection to using that envelope that Dr. Marten has. I will pass it to counsel and see if they have any objection.

(Received in evidence and marked People's Exhibit No. 5, without objection.)

By the Court:

1058

Q. Are we to take it that the mushrooming is caused by its going through the skull? A. Yes, sir, any hard substance would cause a mushroom.

By Mr. Turkus:

Q. Now, Doctor, will you refer to the bullet which you have labeled No. 3, the entrance wound? A. Yes, sir.

Q. Did that bullet enter on the left side of the neck about 2½ inches to the left of the mid line of the neck or on a level with the upper border of the thyroid cartilage, which is known as the Adam's apple? A. Yes, sir.

1059

Q. Will you indicate that point of entrance to the jury and tell us where you recovered that bullet? A. This wound was to the left side of the neck about the level of the Adam's apple. It went from left to right almost horizontally across, somewhat backward, and imbedded itself on the side of the 4th cervical vertebra.

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Q. Will you indicate where the 4th cervical vertebra is? A. (Witness indicates on court attendant.)

Q. Having entered the left side of the neck?

A. Yes, sir, just about the level of the upper part of his collar (indicating on court attendant).

Q. Did you recover that bullet that lodged itself in the vicinity of the 4th cervical vertebra in the autopsy? A. Yes, sir.

Q. Did you mark that bullet? A. Yes, sir.

1061 Q. How did you designate it? A. This I believe is "MR," yes, sir.

Mr. Turkus: I offer that bullet in evidence.

(Received in evidence and marked People's Exhibit No. 6, without objection.)

Q. This bullet which you recovered in the region of the 4th cervical vertebra appears to be deformed. Is that the exact condition in which you found it? A. Yes, sir.

1062

Q. Can you account for that deformity of the bullet, or has that something to do with ballistics? A. I would rather have it explained by the ballistics expert.

Q. At any rate, that bullet, in its course and track, did not hit any bony parts of the body?

A. It hit alongside of the 4th cervical vertebra.

Q. (The Court). That is the bone? A. Yes, sir.

Q. Bullet 5 is the wound that you have described as the entrance wound situated on a level with the suprasternal notch and $2\frac{3}{4}$ inches to the left of the mid line, and that bullet

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1063

passed from backward and slightly laterally. Will you explain to the jury whether that wound does not exit at the Bullet Wound No. 6? Show the jury the course and track of that bullet. A. (indicating on court attendant). About here, on a level with the top of the breastbone and made its exit in the back in the hole we call No. 6. No. 6 situated at a point on the level with the 7th cervical vertebra, 2 inches to the left of the mid line, which would be about here (indicating on court attendant).

1064

Q. I asked you through what part of the body did that bullet pass? A. About the base of the neck.

Q. Referring to Bullet Wound No. 7 which you have described as entrance, situated on the anterior portion of the left shoulder, 6 inches to the left of the mid sternal line and $1\frac{1}{2}$ inches above the level of the suprasternal notch, it took a course from before backward, laterally; see if that does not exit at Bullet Wound 8. A. Yes, sir.

1065

Q. Will you indicate to the jury the course and track of that bullet, showing where it entered and exited and the course through the body it took?

Mr. Cuff: I object to this as being pure repetition, and testified to last night. He testified to that bullet.

Mr. Turkus: The Medical Examiner took seventeen entrance and exit wounds, but the course and track of these bullets have never been established. They are an important part of the People's case.

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The importance will be seen with the next witness.

The Court: Objection overruled.

Mr. Cuff: Exception.

1067 The Witness: It is on the anterior part of the left shoulder, 6 inches to the left of the mid line, which is about here (indicating). This went backwards through the shoulder, the soft part, and then went laterally toward the center and also on the left of the 7th cervical vertebra, and came out at a point 5 inches to the left of the middle, about here (indicating). That takes care of 7 and 8 so far.

Q. Now referring to Bullet No. 9, which you have designated as an entrance wound, did that enter the victim at a point that is about 6³/₄ inches to the left of the mid sternal line and on a level with the suprasternal notch? A. Yes, sir.

1068 Q. Did that wound— Will you describe the track of that bullet wound—showing where it entered and where it exited? A. The track of Bullet 9 perforated the skin only, did not go inside, did not penetrate any member. There was no track, in other words, beyond the skin, of No. 9 bullet.

Q. Will you show the jury where the entrance was? A. The entrance of No. 9 was 6³/₄ inches to the left of the mid sternal line on a level with the suprasternal notch, 6³/₄ inches—about here (indicating).

Q. That left no track and no exit? A. No, sir, it just nicked the skin and did not enter the structure of the chest wall any further.

M. Eduard Marten, M.D.—For People—Direct 1069

Q. Referring to Bullet No. 10, which you have described as an entrance wound situated in line with the anterior axillary fold, 2 inches below the highest point of the pit of the arm, and show the jury the course and track of that bullet. A. No. 10 at its entrance is in line with the anterior axillary fold on the left side, 2 inches below its highest point, a position about here (indicating), and came through at 16. Now, 16—

Q. Is that on a level with the 1st thoracic vertebra? A. That is situated on a level with the right thoracic vertebra and 2 inches to the left of the mid line. 1070

Q. Will you indicate the exit and entrance wound and tell us the course or track of the bullet? A. That is No. 10!

Q. Yes. A. No. 10, situated in a line with the anterior axillary fold, 2 inches below the highest point of the pit of the arm, made its exit at 16, situated on a level with the 1st thoracic vertebra, a position about where I am putting my finger. That is on the upper part of the chest and 2 inches to the left of the mid line. 1071

Q. Did that bullet in its course or track go around the chest wall? A. Yes, sir, it did.

Q. It did not pass through the chest cavity? A. No, that is correct.

Q. Now, Doctor, will you refer to the wound you have described as an entrance, Bullet Wound No. 11? A. 11 was situated on the anterior chest wall at a point $4\frac{1}{2}$ inches below the top of the breastplate and 6 inches to the left of the mid sternal line, about where my finger is now (indicating).

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Q. Did that exit at Wound No. 17? A. It did, yes, sir.

Q. Will you describe where the bullet came out? A. It came out $\frac{1}{4}$ of an inch to the left of the mid line of the back and at the lower angle of the scapula or shoulder blade—one sometimes refers to it as "wing."

1073 Q. Will you tell the jury the course and track of that bullet entering at Bullet Hole No. 11 and emerging at Bullet Hole 17? A. $4\frac{1}{2}$ inches below the level of the suprasternal, 6 inches to the left.

Q. You say that came out on the left of the mid line of the back, at a point you call the scapula or wing? A. Yes, sir. It is a triangular bone. That is, went from before backward, almost horizontally across, and came out at that point.

Q. Did it go from left to right? A. Yes, sir.

Q. Did it go through the 4th rib? A. Yes, sir.

Q. Did it perforate the lower margin and the upper lobe of the left lung? A. Yes, sir.

1074 Q. Did it go through the lower lobe and then through that portion of the body at the 6th thoracic vertebra? A. Yes, sir.

Q. And came out as you indicated at that point where the wing is? A. Yes, sir.

By the Court:

Q. When you were asked last night as to the cause of death, I think you mentioned three causes, one perforation by bullet in the brain, another bullet perforation of the lung. What was the third? A. A hemorrhage that attends either one of those would be fatal.

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1075

By Mr. Turkus:

Q. Will you refer to Bullet Hole No. 12, which you described as entrance? A. Yes, sir.

Q. Will you show the jury if it did not exit at Bullet Hole No. 13? Show the jury the course and track of that bullet. A. Yes, sir. 12 and 13 correspond, 12 being situated on the olecranon, on the left forearm, at a point $3\frac{3}{4}$ inches below the funny-bone. That was the entrance.

Q. (The Court) You mean inside the elbow? A. I mean it was $3\frac{3}{4}$ inches below the olecranon, a process which we commonly refer to as the funny-bone, on the surface of the left forearm. This had a corresponding exit wound.

1076

Q. Was that on the inner surface of the forearm? A. This is labeled No. 13; this is on the inner surface of the forearm, $4\frac{1}{2}$ inches below the bone of the elbow. Here is the point of the elbow (indicating); $4\frac{1}{2}$ inches below.

Q. So that the bullet that went in at the point indicated exited at the point you indicate and fractured the radius of the arm? A. Yes, sir.

Q. Will you tell the jury what the radius is? A. It is one of the bones of the forearm. The outer one, near the front, is the radius.

1077

Q. Those are bones you can feel if you press your arm with your fingers? A. They can be felt, yes, sir.

Q. You refer to Bullet Hole No. 14, entrance. See if that does not correspond with Bullet Hole No. 15, exit, and describe to the jury the course and track of that bullet. A. Yes, sir. 14 was the entrance wound, it is situated on the anterior aspect of the left shoulder on the left or top of



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the breast plate, and 7 inches to the left of the mid sternal line, possibly about here (indicating). This had a corresponding exit at 15, which is on the outer aspect of the arm at a point 4 inches below the bony prominence known as the olecranon process, which overlies the shoulder joint; 4 inches below that on the outer aspect, a corresponding exit wound was No. 15.

I think that takes care of them all.

1079 Q. No, there is one more. A. I checked them as I was going along.

Q. 16 is the exit of Bullet 10? A. Yes, sir.

Q. 17 is the one that corresponds with 11? A. Yes, sir.

Q. Now Doctor, referring now to People's Exhibit 5 and 6, "MM" and "MR", respectively, which you recovered from the body of Joseph Rosen on autopsy and placed where you told the jury, were they delivered by you to the Bureau of Ballistics of the Police Department? A. Yes, sir. I marked them on the envelope at the time.

1080 Q. Do you recall whether you made delivery to Detective George Dumont of the Ballistics Bureau? A. Yes, sir, that is correct. He initialed them for me.

Q. Did you produce those bullets in court? A. Yes, sir.

Q. Did you receive them from Detective Schaefer of the Bureau of Ballistics? A. I believe I did. I marked them.

Q. Do you recall the date you gave them to Detective Dumont and the day you received them back from Detective Schaefer? I may be able to refresh your recollection. A. It was very near the 13th of the month, on the day of the

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autopsy, and they were returned on the 11th month, 7th day, of the 40th year.

Q. That would be November 7, 1940? A. Yes, sir.

Mr. Turkus: The witness is yours for cross-examination.

Defense Counsel: No cross-examination.

By the Court:

1082

Q. Who identified the body to you? A. The son of Mr. Rosen, Harold, and a nephew whose name was Schraner.

Mr. Turkus: And Patrolman Cappadora. That was also testified to.

FREDERICK W. WALSH, Shield No. 809, attached to the 123rd Squad, Police Department, Borough of Brooklyn, City and State of New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

1083

Direct examination by Mr. Turkus:

Q. Are you a member of the Police Department of the City of New York? A. I am.

Q. How many years have you been attached to the police force? A. Since July 1st, 1931.

Q. What is your present assignment or detail? A. 123rd Squad, detective.

Q. Have you heretofore been associated or de-

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tailed with the Ballistics Bureau of the Police Department? A. I was.

Q. For how many years were you connected with the Ballistics Bureau of the Police Department? A. From April 15, 1934, to October 24, 1940.

Q. Some 6½ years? A. Approximately.

1085 Q. While connected with the Ballistics Bureau what were your duties? A. My duties were to make investigations at the scene of shootings, examine any firearms that may have been recovered to determine whether or not they had been recently discharged, examine clothing for the presence or absence of powder marks. Make a search for spent bullets, and note their location.

Q. Did you receive your training from the commanding officer of the Ballistics Bureau of the Police Department? A. I did.

Q. What is his name? A. Sergeant Harry Butts.

Q. On Sunday, September 13, 1936, were you attached to the Ballistics Bureau? A. I was.

1086 Q. Did you receive an order or command in connection with certain duties to be performed? A. I did.

Q. Did you respond thereto? A. I did.

Q. Did you ultimately go to 725 Sutter Avenue, in the Borough of Brooklyn? A. I did.

Q. Do you recall approximately at what time you arrived there? A. About 7:45 a. m.

Q. Were the premises a candy store? A. They were.

Q. Will you turn that photograph around, please, referring to the picture in back of the

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1087

witness chair, People's Exhibit 2 in evidence—is that the place where you went? A. It is.

Q. Do you say you arrived there at approximately what time? A. 7:45 A. M.

Q. Did you there see the body of a man on the floor of that candy store? A. I did.

Q. Do you recall the condition of that body? A. The body was lying on its back face up; there were pools of blood about the body.

Mr. Barshay: I object. This has already been described amply by the other witnesses; it is repetition.

1088

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. Continue with your description. A. And the clothing was bloodstained.

Q. I show you People's Exhibit 1 in evidence and ask you if that is an accurate picture of the condition of the body and the candy store at the time you made your inspection. A. It is.

Q. Now, were you present, Detective, when Medical Examiner Marten arrived and made an inspection of the body? A. I was.

1089

Q. Were you there when the Medical Examiner ordered the corpse removed to the Kings County Morgue for autopsy? A. I was.

Q. Did you see the body removed from the premises? A. I did.

Q. Did you see who picked the body up? A. The officer assisted the morgue attendant.

Q. Did you, after the body was lifted from its position where you first saw it, and then brought to the wagon and then ultimately to the

1090 *Frederick W. Walsh—For People—Direct*

morgue, did you afterwards commence your work? A. Yes, sir.

Q. Will you tell the jury what you found at the scene of the homicide? I would like you to detail the measurements of the place, where you found the bullets. If you cannot do it by memory, refer to any paper that will refresh your recollection. A. May I refer to my notes?

The Court: Yes.

1091 The Witness: I first noted that there was a bullet hole in the west wall 47½ inches up and 90 inches from the north wall at the edge of the mirror, the same penetrated the wall and exited into the adjoining hat store.

Q. Will you look at People's Exhibit 2 in evidence, that large photograph in back of you. Is the west wall as you describe it the wall between the candy store and the hat store called the Pearl-Renee Hat Shop? A. It is.

1092 Q. Will you look at People's Exhibit 1 in evidence and tell us if the wall you refer to is not the wall nearest the telephone booth on People's Exhibit 1? A. It is.

Q. You say there was a bullet hole on that wall in the candy store nearest the telephone booth, that went through the wall and came out in the hat store or hat shop?

Mr. Rosenthal: May I have it clear on the record that I am going to object and that all this testimony is taken subject to connection and subject to a motion

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1093

to strike out as far as the defendant Capone is concerned?

The Court: Yes.

Mr. Barshay: And as far as the defendant Buchalter is concerned?

The Court: Yes.

Mr. Talley: And as far as our defendant, Weiss, is concerned?

The Court: Yes.

Q. Is that correct? A. It is.

1094

Q. Did you give the measurements as being, the point of entrance in the candy store as 47½ inches up and 90 inches from the north wall? A. I did.

Q. Is the north wall the wall against which the telephone booth and the various containers of candy and bottles are indicated on People's Exhibit 1, their Coca-Cola exhibit? A. Yes.

Q. So that roughly, then, the back of the store is the north wall? A. Yes, sir.

Q. And the wall connecting the candy store with the Pearl-Renee Hat Shop is the west wall? A. It is.

1095

Q. Did you go into the Pearl-Renee Hat Shop in search of that bullet which went through the candy store west wall? A. I did.

Q. Where did you find that bullet exited? A. It exited at the east wall of the hat shop at a point 41 inches up from the floor, and I recovered that bullet lying on the floor 36 inches from the north wall and 2 inches from the east wall.

Q. Does that indicate that the bullet, after

1096

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going through the wall, still carried on? A.

Yes, sir.

Q. 36 inches before it dropped, or does it indicate it dropped right alongside of the wall? That is not clear to me. A. It apparently bounced around the room and was found lodged there or it may have been kicked to the position I recovered it in.

1097

Q. What kind of a bullet was it that you recovered in the Pearl-Renee Hat Shop? A. That was a .38 calibre copper-coated lead bullet, twisted rifling, left six, which I marked "FW 2" for identification.

Q. Was that a .38 calibre special? A. Yes, sir.

Q. Was it a copper-coated bullet? A. Yes, sir.

Q. When you say "left six," does that refer to the rifling? A. Twisted rifling.

Q. Did you mark that bullet with "FW 2" as you just stated? A. I did.

Q. Have you that bullet here? A. Yes, sir.

1098

Q. May I see it? A. (producing) This is "FW 2".

Mr. Turkus: The bullet "FW 2" found under the circumstances related by Detective Walsh I offer in evidence.

(Received and marked People's Exhibit No. 7 in evidence, without objection.)

Q. Referring to People's Exhibit 7, which is that spent bullet, "FW 2", and which you said

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1099

"left six", does that mean the twisted rifling was left? A. It was from the left to the right.

Q What does "six" mean? A. That there are six lines of groove marks engraved on that bullet.

Q Will you tell the jury what "rifling" is? A. "Rifling" is the result of a bullet or projectile having been fired from a firearm, the twisted rifling having been put there by the manufacturer.

1100

By the Court:

Q. There is rifling in a gun made for the purpose of obtaining greater speed of the bullet when it leaves the gun? A. It does.

Q. By looking down the barrel of a gun, is that visible? A. Yes, sir, it is.

By Mr. Turkus:

Q. Isn't it a scientific fact that every barrel has a rifling that leaves an impression on the bullet, leaves the impression on that bullet alone; in other words, that any gun which fires a bullet will leave a peculiar characteristic of the bullet which has remained in that gun? A. It is true of rifles and firearms.

1101

Q. That is also true as to fingerprints? A. Yes, sir.

Mr. Climenko: I object to that as calling for a comparison. You have not qualified him on that.

The Court: The question of rifling is quite apart from the question of individ-

1102

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ual characteristics of firearms. I want the jury to understand—is this a plain statement: The purpose of rifling the inner surface of the rifle or gun barrel is to spin the bullet and thereby produce more velocity?

The Witness: That is true.

1103

Q. That is, if the rifle barrel is not rifled or if the gun barrel is not rifled, the bullet shoots out and simply sails in the air? A. Turns end over end.

Q. But when it spins it maintains its true course afterward? A. That is correct.

Q. Then the rifle mark on the bullet, as I take it, is caused by the resistance of the fire on the inner side or surface of the barrel by the lead or copper or other covering on that bullet, thereby leaving a mark? A. Yes, sir.

Q. Which is indicated in precisely the opposite direction by any scar it leaves on the bullet? A. In the same direction.

1104

By Mr. Turkus:

Q. This bullet which was recovered in the hat shop, initialed "FW 2", People's Exhibit 7 in evidence, was that weighed? A. It was.

Q. And what was its weight? A. 155.6 grains.

Q. Did you find another bullet at the scene of the homicide? A. Yes, sir.

Q. What was the next bullet you found? A. I found a bullet imbedded in the floor at a point 7 inches from the right shoulder of the deceased. This was 52 inches from the west wall and 74 inches from the north wall.

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1105

Q. What kind of a bullet was it? A. That was a .38 calibre Special, half metal case bullet, left six, which I marked "FW 1."

Q. You say you pried that out of the floor at a point 7 inches from the right shoulder of the corpse? A. Yes, sir.

Q. Would that be in the vicinity of that Coca-Cola box shown on People's Exhibit 1? A. It would.

Q. Did you put a mark on the bullet which you pried out of the floor? A. I did.

1106

Q. How did you mark or designate that bullet? A. "FW 1."

Q. Did you weigh that bullet? A. I did.

Q. What was its weight? A. 175.2 grains.

Q. Was that a different type of bullet you referred to from People's Exhibit 7 in evidence, the spent bullet which you marked "FW 2," as half-metal case bullet, am I correct? A. The first bullet was copper coated.

Q. The second bullet you speak of, was that a half metal case bullet? A. Half metal case bullet.

1107

Q. That is "FW 1"? A. Yes, sir.

Q. Is that a different type of ammunition, that copper-coated bullet? A. The bullet itself is made of different construction. It has a cupro-nickel jacket over the nose of the bullet, half way to its face, and it is termed, half-metal case.

Q. Cupro-coated, is that a fine veneer of copper over the lead bullet? A. Yes, sir.

Mr. Turkus: I offer the bullet, "FW 1" in evidence.

(Received without objection and marked People's Exhibit 8 in evidence.)

1108

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By the Court:

Q. What is cupro-nickel? A. A composition of nickel and copper used in the metal covering for manufacturing bullets.

Q. How do you spell it? A. Cupro-nickel.

By Mr. Turkus:

1109

Q. Referring to People's Exhibit 8, that half-metal case bullet, is that jacket that goes or fits over the lead, is that what makes it known as half-metal case? A. It has a cupro-nickel jacket that fits half way down over the nose of this bullet.

Q. Will you tell the jury now where you found the next bullet? A. I found a bullet hole in the floor at a point 85½ inches from the north wall and 53 inches from the west wall beneath the body from which I recovered a bullet.

Q. You recovered the bullet directly beneath the body at the measurements you have indicated? A. Yes, sir.

1110

Q. What kind of a bullet was that? A. A .38 calibre special copper-coated lead bullet, left deformed, which I marked "FW 3."

Q. Did you weigh that? A. Yes, sir.

Q. What did it weigh? A. 154.6 grains.

Mr. Turkus: I offer the bullet in evidence.

(Received and marked People's Exhibit 9 in evidence, without objection.)

The Court: See that each bullet is in

its proper envelope before another one is passed around.

Q. In addition to People's Exhibit 9, "FW 3," which you pried out from the floor underneath the body, did you find another bullet beneath the body embedded in the floor? A. I did.

Q. Tell the jury about that. A. A bullet hole in the floor beneath the body, 82 inches from the north wall and 58 inches from the west wall.

Q. What kind of a bullet was that? A. .38 calibre Special, copper-coated lead bullet, left deformed, which I marked "FW 4."

1112

Q. Did you weigh that bullet? A. Yes, sir.

Q. What did it weigh? A. 152.2 grains

Mr. Turkus: I offer that bullet in evidence.

(Received and marked People's Exhibit 10 in evidence, without objection.)

Q. In addition to these two bullets which you pried out of the floor, underneath the body, People's Exhibit 9 and 10, which are marked "FW 3" and "FW 4," did you find still another bullet beneath the body which you pried out of the floor? A. Yes, sir.

1113

Q. Will you tell the jury where that bullet was? A. That bullet was at a point 78 $\frac{1}{2}$ inches from the north wall and 57 $\frac{1}{2}$ inches from the west wall, imbedded in the floor.

Q. What was it? A. A .38 calibre Special half-metal case bullet, left deformed, marked "FW 5."

Q. Did you weigh that bullet? A. Yes, sir.

1114 *Frederick W. Walsh—For People—Direct*

Q. What was the weight? A. 155.2 grains.

Mr. Turkus: I offer that bullet in evidence.

(Received and marked People's Exhibit 11 in evidence, without objection.)

1115 Q. In addition to those three, People's Exhibits 9, 10, and 11, which you have in court, "FW 3", "FW 4", and "FW 5", respectively, did you find still another bullet imbedded in the floor underneath the body? A. I did.

Q. Where did you find that bullet? A. That was at a point 84½ inches from the north wall and 61 inches from the west wall, imbedded in the floor.

Q. What type did you recover there? A. A .38 calibre Special, half-metal case bullet, left deformed, which I marked "FW 6."

Q. Did you weigh that bullet? A. I did.

Q. What was its weight? A. 156.5 grains.

1116 Mr. Turkus: I offer that bullet in evidence.

(Received and marked People's Exhibit 12, without objection.)

Q. How was that candy store floor covered, and describe how you pried these bullets out of the floor in the condition they were in when you pried them out. A. The floor was covered with two types of linoleum, and the bullets were recovered imbedded straight into the wood beneath the linoleum.

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1117

Q. Did you take those bullets out of the wooden floor beneath those two layers of linoleum? A. Yes, sir.

Q. Was there any blood on the bullets? A. There was some blood over the bullets, because I removed the clot from above this in order to locate them.

Q. Were you there when the body was lifted up from its position on the candy store floor? A. Yes, sir, I was.

Q. Did you see the position of the body before it was lifted up from the floor and removed to the morgue? A. I did. 1118

By the Court:

Q. What method did you use in gouging or cutting out these bullets from the floor to prevent further mutilation? A. I cut around into the floor with a pen knife without touching or scarring further.

By Mr. Turkus:

1119

Q. Referring to the four bullets you dug out of the floor underneath the body, People's Exhibits 9, 10, 11, 12, designated by you as "FW 3," "FW 4," "FW 5," "FW 6," will you tell the jury whether or not two of the bullets are not copper-coated bullets and the other two half-metal case bullets? A. Exhibits 9 and 10 are copper-coated lead bullets, and Exhibits 11 and 12 are half-metal case bullets.

Q. Those four bullets, the two copper-coated and the two half-metal case, were pried out from

1120

Frederick W. Walsh—For People—Direct

the floor in the manner described to the jury. Were those direct shots? A. They entered directly into the floor.

Q. Having been present when the body was lifted up, and having done the things you described to the jury, can you say with reasonable certainty that the victim was flat on his back when those four bullets went through his body into the floor as direct hits? A. I cannot.

1121

Q. Can you say with reasonable certainty the four bullets, the two copper-coated and the two half-metal case, Exhibits 9, 10, 11, and 12 in evidence, were direct hits through the body into the floor? A. I cannot.

Q. Describe the course of those bullets. A. Those bullets were fired directly into the floor. Whether they passed through the body or not, I am unable to tell.

Q. You found blood on them, didn't you?

Mr. Barshay: I object. He is trying to impeach his own witness.

1122

The Court: I can understand the objection. There was a pool of blood on the floor, so the presence of blood on the bullet would not mean it passed through his body. The jury will listen to argument on that point. The witness says he cannot say as an expert.

By Mr. Turkus:

Q. As I understand it, you were there when the body was lifted off the floor? A. I was.

Q. Now, in prying out those bullets, did you

Frederick W. Walsh—For People—Direct

1123

say there was coagulated blood there? A. There were pools of blood covering these bullet holes beneath the body.

By the Court:

Q. Were there bullet holes in the wood, directly into the wood, or did they go laterally into the wood? A. Directly into the wood.

Q. Laterally would mean they ran somewhat sidewise. A. Either one side or the other.

Q. In other words, it was a downward shot? A. Yes, sir.

1124

By Mr. Turkus:

Q. Referring to the four bullets recovered from underneath the body, they were not angular shots, were they?

Mr. Climenko: I object to that as repetition.

The Court: He has just explained. He said they were directly down into the floor from above.

1125

Mr. Turkus: I ask that this revolver be marked for identification.

(Received and marked People's Exhibit E for identification.)

Q. People's Exhibit E for identification, was that People's Exhibit E for identification brought to the Ballistics Bureau of the Police Department? A. It was.

1126

George V. Dumont—For People—Direct

Q. Do you recall the day it was brought there?
A. September 14, 1936.

Q. Was it brought there by Detective King of the 75th Squad? A. It was.

Q. Did you receive the gun from Detective King at the direction of your commanding officer, Sergeant Butts of the Ballistics Bureau? A. I did.

Q. Did you turn it over to Sergeant Butts for comparison purposes? A. I did.

1127

Mr. Turkus:⁹ The witness is offered for cross examination.

Defense Counsel: No questions.

GEORGE V. DUMONT, Shield No. 1631, attached to the Brooklyn Homicide Squad, Police Department, Borough of Brooklyn, City and State of New York, called as a witness in behalf of the People, after being duly sworn, testified as follows:

1128

Direct examination by Mr. Turkus:

Q. Are you a detective in the employ of the Police Department of the City of New York?
A. Yes.

Q. How many years have you been attached to the Police Department of the City of New York?
A. For the past 18½ years.

Q. How many years have you been in the Detective Bureau? A. About 8½ years.

Q. How many years have you been assigned as

George V. Dumont—For People—Direct

1129

a detective to the Ballistics Bureau? A. I was there about 8½ years, I take that back.

Q. Your present assignment, is that in the Brooklyn Homicide Squad? A. Yes, sir.

Q. During the month of September, 1936, were you assigned a detail to the Bureau of Ballistics of the Police Department of the City of New York? A. I was.

Q. In the course of your regular duties did you receive People's Exhibits 5 and 6 in evidence? A. I did.

1130

Q. Did you receive those two bullets, People's Exhibits 5 and 6 in evidence, from the Deputy Chief Medical Examiner, Dr. Martin? A. I did.

Q. Are those two bullets marked MM and MR, respectively? A. They are.

Q. Were they received by you in the regular course of your duties at the Ballistics Bureau on the 14th of September, 1936? A. They were received by me at the morgue; I brought them to the Ballistics Bureau.

Q. What was the date they were received at the morgue? A. September 14, 1936.

1131

Q. Did you take both of these bullets, "MM" and "MR," respectively, designated People's Exhibits 5 and 6 in evidence, to the Bureau of Ballistics of the Police Department? A. Yes, sir.

Q. Did you there turn them over to your commanding officer, Sergeant Butts, for comparison, examination, and inspection? A. I did.

Mr. Turkus: You may inquire.

Defense Counsel: No questions.

1132

Emil Scharfer—For People—Direct

EMIL SCHAEFFER, Shield No. 1163, Ballistics Bureau, Police Department, Borough of Brooklyn, City and State of New York, called as a witness in behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. You are a detective in the employ of the Police Department of the City of New York?

A. Yes.

1132

Q. How many years have you been attached to the Police Department of the City of New York?

A. Ten years.

Q. Of those ten years how many years have you been a detective? A. Seven.

Q. Are you attached to the Bureau of Ballistics? A. I am.

Q. How many years have you been there attached? A. Seven years.

Q. I show you People's Exhibits 5 and 6 in evidence, and I ask you whether or not you received them during the regular course of your duties in the Ballistics Bureau? A. Yes, sir.

1134

Q. Are those bullets marked "MM" and "MR." respectively? A. Yes, sir.

Q. Did you on the 7th of November, 1940, receive those two bullets marked "MM" and "MR." respectively, now designated People's Exhibits 5 and 6 in evidence? A. Yes, sir.

Q. From whom did you receive those bullets? A. Sergeant Butts, the commanding officer of the Ballistics Bureau.

Q. To whom did you make delivery of those bullets? A. To Dr. Marten, the Medical Examiner.

Defense Counsel: No questions.

Herman Schiesser—For People—Direct

1135

HERMAN SCHIESSER, residing at 123-19 85th Avenue, Richmond Hill, Borough of Queens, City and State of New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Were you a member of the Police Department of the City of New York? A. Yes, sir.

Q. For how many years were you a member of the Police Force? A. About 25 years and 5 months.

1136

Q. Did you retire from it? A. I did.

Q. What was the date of your retirement? A. March 7, 1937.

Q. Are you presently employed? A. Yes, sir.

Q. Where are you employed? A. By Gibbs & Cox, 21 West Street.

Q. Of the 25 years you have been in the Police Department, how many years were you a detective? A. Between 23 and 24.

Q. (The Court) What is the business of Gibbs & Cox? A. They are architects and draftsmen.

1137

Q. For 23 or more years you were attached to the Detective Division of the Police Department and you were assigned to a particular or specific detective division? A. I was.

Q. What detective division were you detailed to? A. The 12th Detective Division.

Q. What squad of detectives were you assigned to? A. The 75th Squad.

Q. Did you then, for upwards of 23 years, work as a detective in that particular district, which was the 12th Detective Division? A. I worked in the 75th Squad for about 20 years.

1138

Herman Schiesser—For People—Direct

Q. On Sunday, September 13, 1936, Detective, did you work a tour of duty? A. Yes, sir.

Q. Do you recall the tour? A. From half past eight to six p. m.—from 8:30 in the morning until 6 P. M. at night on September 13, 1936.

Q. At sometime during the morning of Sunday, September 13, 1936, while you were doing your tour of duty, did you find an automobile? A. I did.

1139

Q. At approximately what time did you find this automobile? A. At about 10:04 a. m. September 13, 1936.

Q. Where did you find it?

Mr. Climenko: At this time may I note an objection to this question and to the line which we may reasonably anticipate will follow, so I will not be required to repeat? The point is that the testimony perhaps is not binding on the defendant.

The Court: Objection overruled.

Mr. Climenko: Exception.

1140

Q. Where did you find it? A. I found it on Van Sinderen Avenue near Livonia.

Q. Was the automobile on Van Sinderen Avenue? A. Yes, sir.

Q. Was it north of Livonia Avenue? A. Yes, sir.

Q. How many feet from it approximately? A. About forty feet.

Q. What kind of an automobile did you find there? A. A black Chevrolet, a 1935 black Chevrolet coach.

Q. Was that car abandoned when you found it? A. Yes, sir.

Herman Schiesser—For People—Direct

1141

Q. Was it a two door? A. Yes, sir, two door.

Q. A four passenger hard top vehicle? A. Yes, sir.

Q. Black in color? A. Yes, sir.

Q. Did it bear license plates? A. Yes, sir.

Q. What were they? A. L-16-67.

Q. New York? A. Yes, sir.

Q. 1936? A. Yes, sir.

Q. Did you make a report of your discovery or finding of this abandoned car? A. I did.

1142

Mr. Climenko: Objected to as incompetent.

The Court: Objection overruled.

Mr. Climenko: Exception.

Q. After you made this report of the finding of a stolen car with "L-16-67, N. Y., 1936", plates, did you see Detective King? A. Yes, sir.

Q. Was it Detective King who was attached with you to the 75th Precinct? A. Yes, sir.

Q. Upon the arrival of Detective King was the engine number of the car dusted off with a cloth? A. I had dusted it off.

1143

Q. Were the numbers brought out to view so they were visible? A. Yes, sir.

Mr. Turkus: I offer this photograph to be marked for identification.

(Received and marked People's Exhibit F, for identification.)

Q. (The Court:) Why did you dust it? A. There had been grease on it and you could not see the numbers.

1144

Herman Schiesser—For People—Direct

Q. I show you People's Exhibit F, for identification, and ask you if that truly represents the automobile that you described which you found abandoned under the circumstances you have told the jury. A. Yes, sir.

Q. Was that the position in which it was when you made your finding or discovery of that car? A. Yes, sir.

1145

Mr. Turkus: I offer the photo in evidence.

Mr. Climenko: I note the same objection and take exception.

The Court: Objection overruled.

(Received and marked People's Exhibit 13.)

(Exhibit 13 passed around to the jury.)

Mr. Turkus: May I request that this photograph be marked for identification.

1146

(Photograph received and marked People's Exhibit G, for identification.)

Q. I show you People's Exhibit G, for identification, and ask you if that is another view of the automobile which you have related in your testimony to the jury. A. Yes, sir.

Mr. Turkus: I offer it in evidence.

Q. For the record, is that the rear view of the car? A. Yes, sir.

Herman Schiesser—For People—Direct

1147

By the Court:

Q. The right wheel being up on the curb—in the same position? A. Yes, sir, the car was facing north on Van Sinderen Avenue.

Q. How far was that from the scene of the alleged shooting? A. Eleven blocks—eleven and one-half blocks—fourteen blocks.

Mr. Cuff: I make the same objection as before.

The Court: Objection overruled. Mark it.

1148

(Received and marked People's Exhibit 14.)

Mr. Cuff: Exception.

By Mr. Turkus:

Q. Did you discover this abandoned car shown on People's Exhibits 13 and 14 at the position they are indicated on the exhibits? A. Yes, sir.

Q. Is that close by the I.R.T. or the B.M.T. station at Van Sinderen Avenue? A. Yes, sir.

1149

Q. Is there a railroad bridge there that goes over the Junius Street side? A. Yes, sir.

Q. Will you look at People's Exhibit 13, look through the front and back glass of the automobile, and see if you can see a portion of a candy stand that is located near the I.R.T. and the B.M.T. station? A. It may be, but it may not be visible.

Mr. Climenko: I object. The exhibit offered speaks for itself.

1150

Hirsh Merlis—For People—Direct

The Court: Objection overruled.
Mr. Climenko: Exception.

Q. Now, you cannot see it through the glass?
A. I know the candy store being there.

Q. Is it where that opening is? Will you indicate where that is? A. Looking right through there (indicating), it would be right in here (indicating). There is a doorway leading up there into the station.

1151

Defense Counsel: No questions.

HIRSH MERLIS, residing at 166 Orchard Street, Borough of Manhattan, City and State of New York, called as a witness on behalf of the People, after being duly sworn, testifies:

Direct examination by Mr. Turkus:

1152

Q. Did you or your father operate a candy store and newspaper stand underneath the I.R.T. and B.M.T. station located at Livonia and Van Sinderen Avenues in Brooklyn? A. Yes, sir.

Q. For how many years did you and your father operate that stand? A. About seven years.

Q. Would that be from on or about February, 1931, to on or about November, 1937? A. Yes, sir.

Q. Where was the entrance to the B.M.T. station with relation to your newsstand? A. Right opposite.

Hirsh Merlis—For People—Direct

1153

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit H, for identification.)

Q. I show you People's Exhibit H, for identification, and ask you if it fairly and truly represents the candy store you and your father operated for seven years, as you have told this jury. A. Yes, sir.

1154

Mr. Turkus: I offer the photo in evidence.

Mr. Climenko: Your Honor, may we assume this is being taken subject to connection, subject to a motion to strike out.

The Court: Yes.

(Photograph received and marked People's Exhibit 15.)

Q. (The Court) Is that right in the entrance?
A. The entrance is right on that side (indicating).

1155

Q. Up where you are, behind the station, you face the entrance? A. Yes, sir.

Q. The entrance to the I.R.T. or the B.M.T.?
A. The B.M.T.

Q. (The Court) Just a few feet away? A. Yes, sir.

Q. Referring to People's Exhibit 15, the photograph which you have just identified, is that substantially the way your stand, the candy stand, looked at or about September of 1936?
A. Yes, sir.

1156

Hirsh Merlis—For People—Direct

Q. Is that the exact location where the stand was? A. Yes, sir.

Q. Is that surrounding territory or locale as exhibited on People's Exhibit 15, in evidence?

A. Yes, sir.

Q. What is this street which runs toward your stand? A. Van Sinderen Avenue.

Q. What is the street that runs parallel with the bridge? A. Near the B.M.T.?

Q. Yes. A. That is Van Sinderen Avenue.

1157

Q. That is, the street running alongside the railroad tracks is Van Sinderen Avenue? A. Yes, sir.

Q. And the street running toward your stand is Livonia Avenue? A. Yes, sir.

Q. Now, is that stairway indicated on the picture to the left of your stand, a stairway that leads to the I.R.T.? A. The I.R.T. or to Junius Street.

Q. When you say, "or to Junius Street," do you mean Junius Street side of the bridge over the railroad tracks? A. Yes, sir.

1158

Q. That is indicated, isn't it, on People's Exhibit 15, the entrance to that stairway which leads up to the I.R.T. or the Junius Street side of the tracks? A. Yes.

Q. And on Sunday, September 13, 1936, at approximately what time of the morning did you go on duty? A. About 3:00 o'clock.

Q. How long did you work? A. Until about noon of the next day.

Q. Now, during the course of Sunday morning, about 7:00 o'clock, was your attention attracted to something? A. There was a car com-

ing around, went up from Livonia, went around to Van Sinderen Avenue, and stopped.

Q. You say the car came around Livonia and turned into Van Sinderen and stopped? A. Yes, sir.

Q. Did that car go at a fast rate of speed? A. Pretty fast.

Q. Did the car make any noise when it turned into Van Sinderen from Livonia? A. It had to stop a little to make a right hand turn and it screeched a little.

1160

Q. Did it pull up suddenly or abruptly? A. It stopped about thirty or forty feet off the corner.

Q. Did it come to a stop with a screeching noise, or was the screech made when it made the turn?

Mr. Talley: I object unless the witness testifies. I object to this question as leading.

By the Court:

1161

Q. When was the screeching, was it on the turn? A. When he made the turn, like when he came in from Livonia into Van Sinderen.

Q. It screeched at the turn? A. Yes, sir.

Q. Did the car stop? A. Yes, sir.

By Mr. Turkus:

Q. Who did you see get out of the car? A. Four men.

1162

Hirsh Merlis—For People—Direct

Q. Where did these four men walk? A. Toward my stand.

Q. Did they walk down Van Sinderen toward the stand? A. Yes, sir.

Q. What did they do when they got near the stand? A. They just walked by me.

Q. Where did they walk to? A. They walked up toward the trestle.

1163

Q. Will you show the jury on this picture, People's Exhibit 15, in evidence, the entrance to the station and trestle that these four men walked up to? A. (Witness indicates.)

Q. Are you indicating the entrance to the I.R.T. subway and to the bridge across to the Junius Street side of that railroad track? A. Yes, sir.

By the Court:

Q. Which one do you refer to? A. The walk which you take over to Junius Street, or you can go over to the I.R.T.

1164

Q. That is a pedestrian trestle? A. Yes, sir.

Q. Not an elevated structure? A. No, sir, a foot bridge.

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit I, for identification.)

By Mr. Turkus:

Q. I show you People's Exhibit I, for identification, and ask you whether or not that is a

Hirsh Merlis—For People—Direct

1165

photograph showing the walk across the railroad track leading from Livonia and Van Sinderen side to the Junius Street side of the tracks.

A. Yes, sir.

Q. As you go up the stairs, does that photograph show where the train level is of the I. R. T. station? A. Yes, sir.

Mr. Turkus: I offer the picture in evidence.

(Received without objection and marked People's Exhibit 16.)

1166

By the Court:

Q. What is the name of that station? A. One is Livonia, the B. M. T., and the other is Junius Street station of the I. R. T.

Q. What tracks are those below the cross-over? A. The Long Island Railroad.

Mr. Turkus: I ask that this photograph be marked for identification.

1167

(Received and marked People's Exhibit J, for identification.)

Q. I show you People's Exhibit J, for identification, and ask you if that represents the Junius Street side of the walk-over connecting up from the entrance to your stand. A. Yes, sir.

Q. Is that the way it was substantially in September of 1936? A. Yes, sir.

Mr. Turkus: I offer it in evidence.

1168

Hirsh Merlis—For People—Direct

(Received without objection and marked
People's Exhibit 17.)

By the Court:

Q. Where is your stand (handing witness exhibit)? A. It is on the other side.

Q. It does not show on the picture? A. No, sir.

1169

Q. On the opposite side of the Long Island Railroad? A. Yes, sir.

By Mr. Turkus:

Q. In order to have this clear—

The Court: Which is the street that appears on the other side of the track there (indicating)?

Mr. Turkus: If you are referring to People's Exhibit 17, that refers to Junius Street.

1170

The Court: What is this street here (indicating on photograph)?

The Witness: Junius Street.

The Court: It crosses Livonia Avenue?

The Witness: Yes, sir.

The Court: (To the jury): The court will now recess until 1:30 P. M. Gentlemen, please do not discuss the case or let anybody talk to you about it. Keep your minds open. Do not talk about the case during the recess hour.

Defendants are remanded.

Hirsh Merlis—For People—Direct

1171

AFTERNOON SESSION. TRIAL RESUMED.

HIRSCH MERLIS, (resumes the stand).

By Mr. Turkus:

Q. Mr. Merlis, just before recess you identified People's Exhibit 15 as a view of the newsstand and the locale of Livonia and Van Sinderen Avenues, did you not? A. Yes, sir.

Q. Did you also identify People's Exhibit 16 in evidence as the bridge across the railroad track? A. Yes, sir.

1172

Q. And did you identify People's Exhibit 17 in evidence as the other side of the track, namely, the Junius and Livonia Avenue side? A. Yes, sir.

Q. Referring to People's Exhibit 15 which is the photograph with your stand on, am I indicating with my finger the entrance to the I. R. T. station and to the bridge on People's Exhibit 16 in evidence? A. Yes, sir.

Q. And if you walk along People's Exhibit 16 in evidence, do you come out down the stairway pictured on People's Exhibit 17 in evidence? A. Yes, sir.

1173

Q. On the Junius and Livonia Street side of the bridge? A. Yes, sir.

Q. Before recess you said that four men got out of this automobile. Do you remember that? A. Yes, sir.

Q. And that they walked past your newsstand up the stairway leading to the I. R. T. and to the bridge, People's Exhibit 17 in evidence. You remember that? A. Yes, sir.

1174

Hirsh Merlis—For People—Direct

Q. At that time when they walked past your newsstand, what were you doing? A. I was sorting the Sunday papers.

Q. Did you get a sufficient view of any of the four men to make a positive identification of any of them?

Mr. Barshay: I object to the characterization.

The Court: Overruled.

1175

Mr. Barshay: Exception.

Mr. Talley: Calling for a conclusion.

Mr. Turkus: Will you read the question, please?

(Pending question read by the reporter.)

A. No, sir.

Q. Will you look at People's Exhibit 13 in evidence, and tell the jury whether or not that is the car which screeched around the corner and from which the four men got out and walked past your stand, as you have testified? A. Yes, sir.

1176

Q. When for the first time did you know that something was wrong with that car? A. Around eleven.

Mr. Cuff: Object to that, if the Court pleases, calling for a conclusion of the witness.

The Court: He has not yet said that he ever knew.

Mr. Turkus: Withdrawn in that form.

Q. At eleven o'clock in the morning, what happened in connection with that car? A. The police

came around and started taking pictures of it and examining it and looking it over.

Q. And was it the very car which had screeched around the corner and from which the four men had emerged and walked past your stand? A. Yes, sir.

Q. And had that car remained there from the time that you saw it screech around the corner and the four men get out until detectives got there and took pictures and examined the car? A. Yes, sir.

Q. Were you then questioned by police in connection with the car? A. Yes, sir.

Q. Was that the first time that you knew there was something wrong with that car?

Mr. Talley: Objected to, if your Honor pleases.

The Court: Sustained.

Mr. Talley: I move to strike it out. It does not belong in the record.

Mr. Turkus: No objection to it.

Q. What time were you relieved from duty that day? A. Around noon.

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barzhay: No questions.

Mr. Cuff: May we have just a few moments?

Mr. Turkus: Will your Honor entertain a motion on my behalf?

The Court: Is there any cross-examination?

1180

John J. McGowan—For People—Direct

Mr. Barshay: No; I would like to make a motion in respect to his testimony.

The Court: All right.

Mr. Barshay: I move to strike it out as not binding on the defendant Buchalter.

The Court: Denied.

Mr. Barshay: Exception, sir. Do I understand that the Court is taking this subject to connection?

The Court: Of course.

1181

Mr. Talley: No cross-examination.

JOHN J. MCGOWAN, Captain, Homicide Squad, Borough of Brooklyn, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

1182

Q. Captain McGowan, are you the commanding officer of the Brooklyn Homicide Squad in charge of all detectives in the homicide division in the Borough of Brooklyn? A. Yes, sir.

Q. And have you held that office in September, 1936? A. Yes, sir.

Q. How many years have you been in the Police Department? A. Thirty years.

Q. And how many years have you been a commanding officer? A. About twenty.

Q. On Sunday, September 13, 1936, at approximately eleven o'clock in the morning, were pictures taken of an automobile at Van Siaderen and Livonia Avenues? A. Yes, sir.

John J. McGowan—For People—Direct

1183

Q. And were those pictures taken under your supervision and direction? A. Yes, sir.

Q. Were they taken by Detective Hammel of the photo gallery of the Police Department? A. Yes, sir.

Q. Do you know where Detective Hammel is today? A. He is dead.

Q. I show you People's Exhibit 13 in evidence, and ask you if that is one of the pictures taken under your supervision and direction at Van Sinderen and Livonia Avenues (handing exhibit to witness)? A. Yes, sir.

1184

Q. And is that a true and accurate representation of the vehicle the picture of which was taken in your presence and under your direction and supervision? A. Yes, sir.

Q. I show you People's Exhibit 14 in evidence and ask you whether or not this picture was likewise taken under your direction and supervision at the same time? A. Yes, sir.

Q. And is People's Exhibit 14 in evidence a rear view of the same vehicle? A. Yes, sir.

Q. And are they both, People's Exhibits 13 and 14, true and accurate reproductions of the vehicle the pictures of which were taken under your direction? A. Yes, sir.

1185

Q. In addition, Captain McGowan, was there further examination made of that vehicle? A. Yes, sir.

Q. Was it a black Chevrolet sedan, two door? A. Yes, it was.

Q. Under your supervision and direction, did you have Detective Hammel place a powder on various parts of the car? A. Yes, sir.

Q. Is that powder commonly known as chemist's gray? A. Yes, it is gray and—

1186

John J. McGowan—For People—Direct

Q. Is it a chalk and mercury mixture? A. Yes.

Q. Is that the powder commonly used by the detective division to bring out fingerprint impressions? A. Yes, sir.

Q. Where under your supervision and direction did Detective Hammel dust this powder known as chemist's gray? A. He dusted the whole car, the outside, side, inside, and the license plates, wheel, steering wheel, and so forth.

1187

Q. In substance, was every place where there might likely be a fingerprint impression dusted with this mixture of chemist's gray? A. Yes, sir.

Q. Was the purpose of that to bring out fingerprint impressions, if any? A. Yes, sir.

Q. Were you or Detective Hammel or any detective acting under your supervision and direction in your presence able to bring out a fingerprint clue or evidence from that automobile or any part of it? A. No, sir.

1188

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barshay: No questions on behalf of Buchalter.

Mr. Talley: No questions.

Mr. Rosenthal: No questions.

Samuel Pearl—For People—Direct

1189

SAMUEL PEARL, residing at 298 East 45th Street, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Mr. Pearl, are you married? A. Yes, sir.

Q. And do you reside at 298 East 45th Street, Brooklyn, with your wife and family? A. Yes, sir.

1190

Q. What business are you in? A. In the pleating and stitching, embroidery, all combined.

Q. Speak up loud. A. Embroidery business.

Q. And what is the name of the company that you operate? A. American Pleating.

Q. American Pleating & Stitching Company? A. Yes, sir.

Q. Where is your place of business? A. 307 West 36th Street.

Q. In Manhattan, New York City? A. In Manhattan, New York City.

Q. Were you in that business in September, 1936? A. Yes, sir.

1191

Q. And where did you live in September, 1936? A. On 5514 Snyder Avenue.

Q. Speak up. A. 5514 Snyder Avenue, Brooklyn.

Q. Is that commonly known as the East Flatbush section? A. East Flatbush section.

Q. Directing your attention to Sunday morning, September 13, 1936, some time during the morning did you take a walk from your home? A. I walked to see a certain property and I went with Snyder Avenue up to Ralph Avenue,

1192

Samuel Pearl—For People—Direct

crossing Church Avenue up to Linden Boulevard, so—

Q. About what time in the morning did you start out to look at a piece of property? A. About after ten, about half past ten.

Q. In your walk in which you were en route to visit a piece of property, did you walk along Ralph Avenue? A. Yes, sir.

Q. And did you walk past Church Avenue? A. Yes, past Church Avenue.

1193

Q. And did you continue north on Ralph Avenue some distance north of Church Avenue? A. North of Church Avenue to Linden Boulevard.

Q. About how far north of Church Avenue had you walked? A. About 125 feet, I think.

Q. While you were walking along Ralph Avenue, in that vicinity, did you see something or find something? A. It just strikes me. I picked it up, that's all. I didn't look for it.

Q. Did something strike your eye? A. Yes.

Q. Where was this something that struck your eye? A. That was on Ralph Avenue.

1194

Q. Where in relation to the sidewalk was it? A. To my left side, walking from Church Avenue.

Q. What was on the left side when you were walking? Was it a vacant lot? A. An empty lot, yes.

Q. Was there high grass in that lot? A. Yes, was grass.

Mr. Turkus: I ask that this photograph be marked for identification.

(Photograph marked People's Exhibit K for identification.)

Samuel Pearl—For People—Direct

1195

Q. Mr. Pearl, I show you People's Exhibit K for identification and ask you if that is a true and substantial picture of the place where you were walking when something met or struck your eye, as you told the jury (handing photograph to witness). Is that a picture of the place where you were walking? A. Yes, that looks the picture, on that side.

Mr. Turkus: It is offered in evidence.

1196

(People's Exhibit K for identification received and marked People's Exhibit 18 in evidence.)

The Court: Straighten me out on this. This street with the white line center—

Mr. Turkus: I will have the patrolman that follows.

The Court: Is that Ralph Avenue?

Mr. Turkus: Will you turn the picture so I can see it? That, I understand, is Ralph Avenue. That is my notion of it.

1197

Q. Is that correct? A. I don't believe that Ralph Avenue has a white line.

The Court: He said "on that side." He put his finger to the left side of the picture.

Mr. Talley: The picture certainly has not been identified.

The Court: It is of little importance. It can be straightened out.

Mr. Turkus: It will be straightened out by the time the police officer leaves the stand who will follow.

1198

Samuel Pearl—For People—Direct

Q. When something met or struck your eye that was in the grass off the sidewalk, what did you do? A. I picked it up.

Q. When you picked it up, did you look at it? A. I saw it is a little too heavy. First it strike me like a child's gun but I picked it up; I put it in the bag I find on the grass and bring it over to the officer.

1199

Q. Was the gun you picked up on the grass what you put into a bag and you went in search of a police officer, is that right? A. Yes.

Q. Did you take the gun in the bag to the policeman? A. To the policeman.

Q. Where did you find the policeman? A. On Linden Boulevard, on Linden or Remsen. There is a couple of streets come together.

Q. Are they Remsen, Kings Highway, and Linden Boulevard? A. Yes.

Q. Was that policeman directing traffic there? A. Yes, sir.

Q. Do you know his name now? A. I know his name.

1200

Q. What is his name? A. Nelson.

Q. Patrolman Nelson. Did you show the gun that was in the bag to the patrolman? A. Yes, sir.

Q. And did you talk to him about the gun? A. I just told him this is what I picked up.

Mr. Cuff: I move to strike it out.

Mr. Turkus: Is that made in good faith?

Mr. Cuff: We should not have any conversation.

Mr. Turkus: If you want it stricken out, I will consent to it.

Samuel Pearl—For People—Direct

1201

Mr. Cuff: Let it go. Please do not have the conversation.

Q. After you spoke to the policeman, did you, the gun, and the bag and the policeman go back to where you saw the gun the first time? A. Yes, sir.

Q. Did you there point out to the policeman where you found the gun? A. Yes, sir.

Q. Were you then taken to a police station by the policeman? A. Yes, sir.

1202

Q. And did the gun and the bag go along with the two of you? A. Yes.

Q. In the presence of the policeman at the police station, did you initial the gun that you found in the lot? A. Yes, sir.

Q. And what initials did you put on? A. S. P.

Q. Are they the initials for your name, Samuel Pearl? A. Yes, sir.

Q. Look at this gun, People's Exhibit E for identification, and tell us if that is not the gun that you found in the lot and initialed in the presence of the policeman (handing gun to witness). Do you see the "S. P." on it? A. Yes, this is the one.

1203

Q. Is that the gun? A. Yes.

Mr. Turkus: It is offered in evidence.

Mr. Barshay: Objected to, not binding on the defendant Buchalter.

Mr. Talley: Make the same objection. It has not been connected in any way at all.

The Court: Overruled.

Mr. Barshay: Exception.

1204

Samuel Pearl—For People—Direct

Mr. Talley: Exception.

The Court: Take it subject to connection.

(People's Exhibit E for identification received and marked People's Exhibit 19 in evidence.)

Mr. Turkus: May I exhibit People's Exhibit 19 to the jury?

1205

The Court: Hadn't you better connect it up first? Sergeant Butts will do that.

Q. Mr. Pearl, can you tell me at about what time it was when you saw that gun, People's Exhibit 19, in the lot? Can you estimate the time? A. Before eleven a couple of minutes.

The Court: What was that?

Mr. Turkus: His estimate was before eleven a couple of minutes.

1206

Q. I guess that means a few minutes before eleven, according to your estimate, is that right?

A. Yes.

Mr. Turkus: The witness is offered for cross-examination.

(No cross-examination.)

Henry G. Nelson—For People—Direct

1207

HENRY G. NELSON, patrolman, shield 12154, attached to Traffic K, New York Police Department, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Patrolman Nelson, are you a member of the uniformed police force of the City of New York?

A. Yes, sir.

Q. And are you presently assigned or detailed to Traffic K? A. Yes, sir.

1208

Q. How many years have you been a member of the Police Department? A. Seventeen and three months.

Q. And how many years have you been attached or detailed to Traffic K? A. About twelve years.

Q. On Sunday, September 13, 1936, were you attached to Traffic K? A. Yes, sir.

Q. And what tour of duty did you do on that day, officer? A. Ten a. m. to five p. m.

Q. Where was your assignment or detail? A. At Kings Highway, Linden Boulevard, and Newport Street.

1209

Q. Is one side of that intersection known as East Flatbush, the district to one side? A. Yes, sir.

Q. And is the other known to be the Canarsie side? A. Yes, sir.

Q. Some time while you were directing traffic at that location during the morning of Sunday, September 13, 1936, did a man whom you now know to be Samuel Pearl approach you? A. He did.

1210

Henry G. Nelson—For People—Direct

Q. Approximately what time was it that he approached you? A. 11:15 a. m.

Q. Without telling me what he said, did that man have a conversation with you; Samuel Pearl, did he hold a conversation with you? A. He did.

Q. At the time that he spoke to you at that intersection, did he have in his possession something? A. He did.

1211

Q. What was that something? A. He had a revolver in a brown paper bag.

Q. In his presence did you take the revolver out of the paper bag? A. I did.

Q. Did you inspect it? A. I did.

Q. Was it a firearm? A. It was.

Q. After you spoke to this man, Samuel Pearl, did you take him to a certain place? A. I took him to the 69th precinct in Canarsie.

1212

Q. What I am referring to is this: Did you take him back to the spot where he found the gun? A. I asked him where he got the revolver and he told me he found it and I asked him to show me the spot and we walked over to the spot where it was found.

Q. Where is the spot that Samuel Pearl pointed out to you as the place where he found the revolver? A. It was about 100 foot north of Church Avenue, west side of Ralph, and the revolver was laying about one foot off the sidewalk on the left.

Q. Will you look at People's Exhibit 18 in evidence and tell us whether or not that substantially shows the place where Pearl indicated he had found the gun (handing exhibit to wit-

Henry G. Nelson—For People—Direct

1213

ness)? A. Yes, sir, right over here (indicating) at about off that tree.

Q. Are you referring to a large tree as you look at the photograph on the right-hand side?

A. That is right, yes, sir.

Q. The tree being on the side nearest the sign which has the word "Ruppert" on it? A. Yes, sir.

Q. And the spot where you indicated as the place where Pearl indicated he found the gun is to the right of that tree as you face the paper?

A. That is right.

Q. In the grass? A. It was a foot off the sidewalk, towards the building line, in the grass.

1214

The Court: How long has that white mark been on Ralph Avenue?

The Witness: I am sorry, I could not say.

Q. At the time when Pearl indicated the spot where he found the gun, was it a vacant lot?

A. Yes, sir.

Q. And was there grass there and weeds? A. There were weeds.

1215

Q. After Pearl indicated to you the position where the gun was found, as you have pointed out to us on People's Exhibit 18, where did you go with Pearl and the gun? A. To the 69th precinct.

Q. Did you there make report to your superior or commanding officer? A. I did, sir.

Q. At the time you arrived was there a report received in the station house about the commission of a murder? A. There was.

1216

Henry G. Nelson—For People—Direct

Q. Was contact then made to the 75th precinct in Brooklyn? A. Yes, there was.

Q. Was that the precinct in which the news came of the murder having been committed? A. It was.

Q. Did a detective come over from the 75th precinct to the 69th precinct? A. Yes, sir.

Q. Do you know the name of that detective?

A. He is here this morning. He is from the homicide squad. I only met him once.

1217

Q. Is it Detective King? A. No, he came from the 75th squad.

Q. Did a man come over from the 75th squad, a detective? A. No, the detective came from the 75th precinct. He was a member of the homicide squad.

Q. Did the detective from the homicide squad, Pearl and yourself go to the 75th precinct? A. Yes, sir.

Q. When you got to the 75th precinct, did Mr. Pearl in your presence initial the revolver, People's Exhibit 19 in evidence, with the initials "S. P."? A. He did.

1218

The Court: When was that picture taken?

Mr. Turkus: This is a recent picture.

Q. Did you in the presence of Pearl and a detective initial this weapon, People's Exhibit 19 in evidence, with the initials "H. N."? A. I did.

Q. And did Detective King of the 75th squad initial the weapon with the initials "W. K." in your presence? A. He did.

Q. Will you look at People's Exhibit 19 in evidence and tell us if that is the gun about which

Henry G. Nelson—For People—Direct

1219

you have testified (handing exhibit to witness)?

A. It is.

Q. Did you, after the gun had been initialed with the initials which it now bears, turn that weapon over to Detective King? A. I did.

Q. At the time when you received that gun from Mr. Pearl under the circumstances you have told the jury, was the barrel empty? A. It was.

Q. And was it in that condition when you turned it over to Detective King? A. It was.

1220

Mr. Turkus: The witness is offered for cross-examination.

Mr. Cuff: No cross-examination.

Mr. Turkus: Just one more thing.

Q. At the time when that gun was initialed in the 75th precinct, was there an Assistant District Attorney by the name of McCarthy then present? A. Yes, sir, there was.

Mr. Barshay: No questions.

1221

1222

William S. King--For People--Direct

WILLIAM S. KING, detective, shield 972, attached to the 75th squad, New York Police Department, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

1223

Q. Detective King, are you a police officer attached to the police force of the City of New York? A. I am.

Q. And are you assigned to the detective division? A. I am.

Q. How many years have you been in the Police Department? A. Twenty-three years.

Q. And how many years have you been attached to the detective division? A. Seventeen years.

Q. In September, 1936, what squad were you attached to? A. 75th squad detectives.

1224

Q. Will you turn around and look at the picture in evidence, People's Exhibit 2, and tell me whether that picture is embraced within the territorial confines of the squad to which you were attached, that candy store? A. It is.

Q. Are you still attached to the 75th precinct? A. I am.

Q. On Sunday, September 13, 1936, in company with Detective Schiesser, now retired, did you go to Van Sinderen Avenue and Livonia Avenue? A. I did.

Q. On Van Sinderen Avenue near Livonia, did you there find a motor vehicle? A. I did.

Q. Will you look at pictures, People's Exhibits 13 and 14 in evidence, and tell us whether

William S. King—For People—Direct

1225

those are views of the automobile that you found in company with Detective Schiesser? A. It is.

Q. At the time that Detective Schiesser and you found that automobile, was there an alarm out for that car bearing license L-1667-1936? A. There was.

Q. And was it an alarm in connection with a murder which had occurred at 725 Sutter Avenue, Brooklyn? A. It was.

Q. Did you examine the automobile? A. I did.

1226

Q. What did it disclose to you, that is the examination; what kind of a car was it? A. It was a Chevrolet 1936 coach, painted black.

Q. Were the motor numbers dusted off with a cloth? A. Detective Schiesser dusted them off, took the oil off them.

Q. After the oil or other substance was wiped off the motor numbers, what numbers were revealed to your observation? A. The motor number 6376729.

Q. Was there investigation then conducted with regard to that motor number of the car and with regard to the license plates L-1667-1936? A. They were.

1227

Q. Detective King, will you look at People's Exhibit 19 in evidence and tell us whether that weapon bears your initials "W.K." (handing exhibit to witness)? A. It does.

Q. And was that revolver or weapon, People's Exhibit 19 in evidence, turned over to you? A. It was.

Q. In a police station? A. Yes, sir.

1228

William S. King—For People—Direct

Q. What day did you receive that gun? A. On September 13, 1936.

Q. Was there present at the time a patrolman by the name of Henry G. Nelson and a civilian by the name of Samuel Pearl? A. They were.

Q. And were their initials put on the gun? A. They were.

Q. Was that in the presence of a former Assistant District Attorney by the name of McCarthy? A. It was.

1229

Q. What kind of a gun is that, detective? A. That is a .38 calibre special Colt.

Q. Is it known as a police special? A. Police positive, police special.

Q. Did you in turn deliver that gun to the Bureau of Ballistics and specifically to Detective Frederick Walsh of the Ballistics Bureau? A. I did.

By the Court:

Q. Police special is a trade name, isn't it? A. Yes.

1230

Q. It does not mean the Police Department owns the gun? A. No, sir.

Q. That is a name under which the Colt concern puts it out? A. That is right.

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barshay: No cross.

Mr. Cuff: No cross.

Mr. Rosenthal: No cross.

Henry F. Butts—For People—Direct

1231

HENRY F. BUTTS, Sergeant, Shield No. 824, attached to the Ballistics Bureau, Police Department of the City of New York, called as a witness on behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Sergeant Butts, are you a member of the police force of the City of New York? A. I am.

Q. And how many years have you been a member of the Police Department of the City of New York? A. Thirty-eight years.

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Q. What is your present assignment? A. I am in command of the Ballistic Bureau.

Q. And how many years have you been attached to the Ballistic Bureau? A. Since it was established in May, 1930.

Q. And have you since that time been the commanding officer in charge of ballistics? A. I have.

Q. What are the duties of the Ballistic Bureau of the Police Department? A. Investigation of cases wherein a firearm has been used, covering those things affected by the firearm, cooperating with the other squads in the investigation.

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Q. Does it, briefly, take in the gathering and safeguarding of all ballistics evidence? A. It does.

Q. Recovery from walls and furniture of spent bullets? A. Yes.

Q. Examination of bullet holes? A. Bullet holes, bullet wounds, powder marks, examination of bullet markings, whether or not an arm functioned properly, anything connected with the firearm.

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Q. In connection with your duties are you brought into the questioning of any witnesses?

A. No, we have nothing to do with the questioning of witnesses, hearing statements, or anything of that nature.

Q. Is your job confined to looking at the scene and the concrete evidence, and from that to supply expert testimony with regard to the things that you find and discover at the scene of crime?

A. That is the job.

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Q. And upon that you do not depend upon any testimony given to you by any human witness; is that correct? A. We disregard the human witness.

Q. For how many years have you made a study of firearms and ballistics? A. Over thirty years.

Q. Are you familiar with the manufacture and makes of American firearms? A. I am.

Q. How many tests have you made in connection with firearms? A. Many, many thousands.

Q. Were these tests made by firing at and through various types of materials? A. Yes, and observing the results both on the material and the results of the action on the bullet and what occurred with the arm.

1236

Q. And in connection with the thousands of tests that you have conducted, have they been in connection with the ordinary household furnishings, plaster, brick, wood, and the other materials we frequently come in contact with? A. That would cover it, and dead human tissue, live and dead animal tissue.

Q. In these tests that you have made, were they for different purposes? A. The various purposes were to, I might say, observe the action

of the arm, the action of the ammunition, the effect on the ammunition as it passed through the arm, and the effect of the ammunition on various things.

Q. When you speak of the arm, do you refer to the firearm? A. The firearm.

Q. During the past twenty-two years, have you been testifying for the Police Department as an expert on firearms? A. Yes, twenty-two or twenty-four years. In that time I have testified well over eight hundred times, possibly a thousand.

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Q. And has your testimony been accepted in courts of record? A. Yes.

Q. Sergeant, did you on or about September 13, 1936, receive from Detective Walsh six bullets? A. I did.

Q. Were those bullets designated with certain markings? A. They were.

Q. And what were the markings that were designated on the bullets? A. A combination of the letters, "F. W.", and then numbers 1, 2, 3, 4, 5, 6.

Q. I show you People's Exhibits 7, 8, 9, 10, 11 and 12, and ask you if they are the six bullets that you received from Detective Walsh, marked, "F. W.", one to six, inclusive? A. They are.

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Q. Will you hold them at your side there, Sergeant. On September 14, 1936, did you receive from the Deputy Chief Medical Examiner, Doctor Marten, two bullets marked, "M. R." and "M. M.", respectively? A. Through Detective Schaefer, I did.

Q. Detective Schaefer is attached to the Ballistics Bureau? A. He is.

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Q. And he received them for you and under your command, is that correct? A. Yes.

Q. Will you look at these exhibits, People's Exhibit 5 and People's Exhibit 6, and tell us whether or not they are the two you received from Doctor Marten through Detective Schaefer?

The Court: Be sure that each bullet is put back in its own envelope, so they won't be mixed as to exhibit number.

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A. They are.

Q. On the same day when you received those bullets marked, "M. R." and "M. M." from Detective Schaefer sent to you from Doctor Marten, did you receive from Detective King People's Exhibit 19, in evidence, this firearm? A. I did.

Q. What kind of a firearm is People's Exhibit 19? A. It is a Colt, Police Positive Special, 38 calibre revolver.

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Q. Does that gun take the same cartridge as the regulation gun for the Police Department of the City of New York? A. It does.

Q. What is the regulation Police Department gun known as? A. In a Colt it is known as the Army special, or official police, and in Smith and Wesson, it is military and police. That would be in the 38 special. There are also as regulation the old 38 police positive that would be had by men who were in the department before 1926 and the Smith and Wesson 38.

Q. Referring to the regulation gun that is in the Police Department at the present time, is this police special a lighter frame? A. It is.

Q. Is it lighter all over in weight? A. It is.

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Q. And it is a lighter gun for carrying purposes than the regulation police firearm? A. Yes, it weighs less.

Q. After you received these articles, People's Exhibit 19, the weapon, the bullets, People's Exhibits 5, 6, 7, 8, 9, 10, 11 and 12, did you make an examination and inspection and tests with regard to the same? A. I did.

Q. Over how long a period of time did it take you to conduct the examination and tests? A. Well, that would be hard to say. The making of tests with the gun, that is, the firing of test bullets, the examination would be done in a half hour, but then the comparison between the test bullets and the bullets that I had, I don't know just how long it took. I would say off-hand it was probably several days.

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Q. Before we go into what the examination and tests showed, when you received that gun, People's Exhibit 19, in evidence, did you examine it? A. I did.

Q. What did you find in connection with that weapon, People's Exhibit 19? A. I found that after leaving the factory the barrel had been threaded at the muzzle and that on that thread there had been placed a collar. That thread is the thread that is used in silencers. The purpose of the collar is to dress up a muzzle when there is not a silencer on it.

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The Court: To protect the thread from damage?

The Witness: Yes, and then it does not look so raw.

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Q. Was that thread on the barrel of the weapon, People's Exhibit 19, in evidence, cut into the barrel after the gun had left the factory? A. Yes.

Q. And was that put on by some mechanical means? A. Yes.

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Q. Has ever in your experience any manufacturer of guns cut a thread on the barrel of a gun such as is on weapon 19 in evidence? A. Not at the factory. There was a manufacturer of guns who became, might I say, mixed up with a group, and he did put silencers on guns, but not on his product while he was making them at the factory.

Q. That was some extra activity on the outside? A. Yes. I might say it was not this. It was the Rising (?) pistol.

Q. Are threadings such as appear on People's Exhibit 19, in evidence, put on the weapon by some individual machinist or gunsmith after the gun has left the factory? A. Yes.

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By the Court:

Q. Is that standard thread or special? A. It is a standard thread.

Q. Adapted for what silencer? A. Adapted to the Maxim.

Q. There is another one, too? A. You just took the name away from me; the one that is made in Ohio.

Q. Is it adapted to either of those silencers? A. Yes, sir.

By Mr. Turkus:

Q. When that gun, People's Exhibit 19, left

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the factory, had it been blued over, as the expression goes, in the factory? A. It was.

The Court: Is that the Moore silencer you were trying to think of?

The Witness: The Moore, yes, sir.

Q. Look at the thread on there. Take the collar off. Does that show raw steel indicating that the threading had been put on after the gun had been blued at the factory? A. Yes.

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Q. What is the purpose of a silencer?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: I respectfully except, sir.

The Court: Is it a muffler?

The Witness: It is really a muffler, and the principle of it and its action is the same as the muffler on your car.

Q. Has a silencer any legitimate purpose in peace times?

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The Court: Objected to.

The Court: Sustained.

Q. Other than being used by a sniper in war time, has a silencer any legitimate function?

Mr. Barshay: Objected to, sir.

The Court: Sustained.

Q. Do you know of any legitimate purpose for which a silencer may be used?

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Mr. Barshay: Same objection.

The Court: The word "legitimate" is objectionable. Sustained.

By the Court:

Q. Is there any standard purpose for which a silencer is commonly used? A. It is not used in hunting; it is not used in target practice.

Q. It is used by police? A. No.

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Q. Is it lined on the inside with circular system of battle plates which absorb the sound? A. Yes.

Q. So that when the discharge occurs there is a very slight sound, a hardly noticeable sound?

A. That is correct.

By Mr. Turkus:

Q. Sergeant Butts, did you make an examination and inspection of that weapon, People's Exhibit 19, in an endeavor to find the serial number of the weapon? A. I did.

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By the Court:

Q. Are those what are known as thimble battle plates? A. Yes, sir.

Q. Inverted backwards? A. Yes, sir, and they are put in so that they have a curve of that sort. The front part would bulge, the rear part—

Q. Briefly, the sound wears itself out before it gets to the muzzle? A. It breaks up sound waves.

Q. Just by interference? A. Yes.

By Mr. Turkus:

Q. I got to the point, Sergeant Butts, where I asked you if you made an examination to endeavor to find the serial numbers of that weapon. A. I did.

Q. When a gun leaves the factory does it have a serial number? A. It does.

Q. And when that particular gun, People's Exhibit 19, left the Colt factory, where did it have its serial numbers? A. At the points that I indicate with the point of the pencil. There would be one number at that point.

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Q. For the record, Sergeant, when you say, "That point," will you describe it with relation to the weapon so that the record will be clear where that number should have been when you looked for it? A. It is not the technical name but let us say this movable hinge on which the cylinder is carried, at that point on the moving part, at that point on the thickest part of the frame.

Q. When you say, "That point," will you describe it for the record? A. The part of the frame is below the bridge of the barrel, where the barrel is screwed into the frame. It is about an inch below the center of the axis of the barrel, and then on the inside of the plate. The plate is that portion held by those two screws. If those two screws are taken out, that part comes out, and near the latch, the serial number is on the inner surface there.

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Q. So that when that weapon, People's Exhibit 19, left the Colt factory it had on it three serial numbers in the positions that you indicated to

1258

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this jury? A. It had the same serial number in three places.

By the Court:

Q. Did it have a secret one inside? A. No, this is inside the plate on the Colt.

Q. You have to remove the plate by taking out the screw? A. Yes, sir; it is not visible.

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By Mr. Turkus:

Q. When you looked at the three places where the serial numbers should have been, did you see them with the naked eye? A. I did not.

Q. Did you look then with a magnifying glass? A. Not with a magnifying glass. When I found that I could not see the numbers, I went to work with acids.

Q. When you could not see the numbers, what did that indicate to you? A. Well, the surface indicated—and that is visible to the naked eye—that the surface had been ground away. Instead of a flat surface there was a groove.

1260

Q. In all the three places, can you say with reasonable certainty that the serial number had been mechanically removed and obliterated?

Mr. Barshay: I object to it as not binding on the defendants.

The Court: Overruled.

Mr. Barshay: Exception.

A. I can.

Q. And had they been mechanically removed and obliterated?

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Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. They had.

Q. When you saw that the serial number in the three places where they should have been on the weapon, People's Exhibit 19, had been so removed and obliterated, did you endeavor to bring out or bring up what the number was before the obliteration? A. I did.

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Q. Tell the jury what tests you conducted and what results you had. A. The acids that I used are nitric and hydrochloric and glycerine, and it takes sometimes thirty seconds and sometimes thirty minutes and sometimes thirty hours.

By the Court:

Q. Briefly, is that called processing? A. It is. I was unable to bring up the numbers.

Q. Is that due to the under grooves of stamping the numbers on the die? A. Yes, sir, the metal beneath the actual stamping.

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Q. Does it crystallize? A. It does.

Q. In the shape of the letters, even though below the cut? A. Yes.

Q. And I take it the acid works in where the metal is crystallized, works around the carbon particles or steel particles? A. Yes.

Q. And forms the letters? A. It does.

Q. That are not visible otherwise to the naked eye? A. And they come up as a ghost.

1264

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By Mr. Turkus:

Q. Sergeant, to make this clear to us who are not experts, when the number is stamped on in the factory in the three places that you have indicated to the jury, is the metal underneath the number compressed? A. Yes.

The Court: Is it bruised?

The Witness: Yes.

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The Court: That is what I mean by crystallized.

Q. When you found that the numbers had been mechanically removed and obliterated, did you endeavor with the acid to bring out the compression or the ghost-like numbers that would come up when the acid ate into that bruised metal? A. I did.

Q. If the obliteration is not too thorough, does the ghost-like number come to view? A. It does.

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The Court: Has that been for many years the common way of determining the numbers of stolen automobiles where the numbers have been filed from the block?

The Witness: The same system. With the automobile very often heat is used in addition to the acid.

Q. Now, what experience or what result did you have after you put the acid on? Did you get a ghost-like number out? A. I got a few numbers but I could not get a complete serial.

Q. Could you get enough numbers on it to

trace that serial number from the Colt factory?

A. No.

Q. Had the obliteration and mechanical removal of the numbers been too thorough?

Mr. Cuff: I object to that.

A. It had.

Mr. Cuff: He answered.

The Court: Overruled.

Mr. Cuff: Exception.

Q. Before we go into the tests, when you received that gun, that weapon, People's Exhibit 19, and you examined it, tell the jury what it disclosed with reference to the number of times it had been fired at the time of last discharge. A. My recollection is that it showed that it had been fired four times at the time of last firing.

Q. The jury must be told the tests that you conducted in regard to People's Exhibit 19, the weapon, and its bullets that you took from it. Will you explain that to the jury, how you get test bullets for comparison? A. We fire the bullet into absorbent cotton. We use the regular hospital rolls of one pound, the ones that are about ten inches in length, about four inches in diameter. We unroll those and take the paper divider out, then re-roll them and fire longwise into the roll. The bullet traveling with forward motion and a motion of rotation strikes the cotton, the cotton fibres are pulled apart and act as a brake and wind themselves around the bullet as a snowball, so that we get in four or five

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has a ball of cotton an inch and a quarter to an inch and a half in diameter, and pulling that cotton apart we find nested in the center of it a bullet. That gives us an undeformed specimen.

Q. For example, Sergeant, could you take that weapon, People's Exhibit 19, put a bullet in it and fire it into the cotton in our view and then take that test bullet out of the cotton? A. Yes.

Q. And that would be an accurate specimen bullet from that gun, is that right, People's Exhibit 19? A. It would.

Q. Has that weapon, People's Exhibit 19, certain peculiar characteristics on the barrel that other weapon has? A. Yes.

Q. And are those characteristics peculiar to that barrel alone? A. They are.

Q. Is that the way in which identification is made of bullets which are fired from a specific particular firearm? A. It is because of that that identification is possible.

Q. And are barrels as different as human fingerprints are? A. I say they are more individual.

The Court: Not from the mere characteristics of the rifling. Will you tell the jury just what there is about the inside of a gun barrel which makes no two exactly alike?

Q. Will you take it from the piece of steel and show the jury how it is bored out and the whole system, so that we will understand it in detail? A. The barrel, that portion that I am indicating

that runs forward and from the frame through which the bullet travels starts out in this case as a solid bar. It is first smooth bored by a single lip cutter. That cutter is fixed in a fixture. It does not move. The barrel is rotated around the cutter so that we get then a smooth bore cut.

Q. Is there oil pumped through there when the cutter is boring in there? A. The oil is pumped through the rod or fixture that holds the cutter. The cutter, as much as my hand, is now coming to a cutting point. Back from the cutter is a V slot and through the center of the fixture there is a hole, and through that hole oil is pumped forward so that it strikes on the cutting point.

Q. Is that oil under pressure? A. About 700 pounds. The purpose of it hitting the cutting point is to lubricate that part and it then after that carries back through the V slot the chips that it has cut away and they come backward along the V slot and are thrown out. After that the barrel is reamed.

Q. That operation that you described, that is the first operation, isn't it?

The Court: He has not finished. Go ahead.

A. (Continued) After the cutting with the single lip cutter there are in this case three or four reamings, that is to smooth down any burrs, any particles that may stick too high as ridges. After that, spiral grooves are cut in the barrel. Those grooves in this case are about three and a half thousandths deep, and there would be six and they would have a left twist.

1276

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Q. Is that commonly called the rifling system, these grooves, or left twist, that you are speaking of? A. That group of six grooves will be called the rifling in that barrel. The twist would make a complete turn in this case in about sixteen inches. If we had a barrel sixteen inches long, the cutter would have one complete turn, cut until it came around. The cutter cuts on the pull stroke, that is, it cuts as it is coming this way and turns, drops into a recess in the fixture, goes forward, and does not do any work, goes over ~~now~~ into the next place in the barrel. It goes over. Where we have six grooves it would go over one-sixth of a turn. The barrel would be turned and it cuts there, goes back. The barrel turns another sixth ~~and~~ she cuts again until she has gone around, and that cutting keeps on until the depth of the cut has reached three and one-half thousandths. During that time the cutting face, in this case in the Colt they use a hook cutter, and that is shaped as my hand is now, and it pull cuts. During this cutting the cutting face of the cutting tool is changing—we say cutting; actually it is a scraping, the same as if we scrape snow off the sidewalk with a rake. It is a scrape. It is not the cut that we talk about or think about when we say cut. That, when it is finished, appears to be mirror-like. If you look down the muzzle of a barrel and have light go through it, you see a mirror-like surface. Actually on that surface there are microscopic projections, irregularities. If we cut open a section, take a photograph of it, we see ridges, we see little dots sticking up.

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The Court: You mean microscopic photographs?

The Witness: Yes.

A. (Continuing) So that when the bullet is driven through the barrel, those microscopic projections actually engrave on the bullet a pattern, and that pattern will be peculiar to this barrel and no other. Two barrels or six barrels made on the same machine, by the same operator, with the same cutter, will be as different as day and night, and no two grooves in the one barrel will have the same characteristics as any of the other grooves of the six, so that we then have a bullet with a pattern on it, and that is the purpose of firing into the cotton, to get an undeformed specimen that will carry the characteristics of this particular barrel, and then a microscopic comparison is made between a bullet in question and the test bullet. The examination is made of those patterns on the various areas. We would have six grooved areas and six land areas. The land would be the undisturbed metal between two grooves. That on the bullet makes a depression. The microscopic comparison is made with the comparison microscope. That is simply two compound microscopes joined by a comparison eye-piece. It has a prismatic bridge. Actually the bullets are set up on the microscope stages about six inches apart. The images are brought up through their individual tubes, across through the prismatic system, and into a single eye-piece, so that we can examine two objects at one time, and if, in the case of the two bullets, we are looking at like areas and they have the

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same pattern, those patterns, those lines, will meet and fuse into each other as my fingers are doing. If they are not from like area or not from the same gun, there won't be a meeting of the lines of the pattern. After the like area is found on both bullets, assuming they are from the one gun, then each successive area of the bullet is examined and checked. •

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Q. Is this correct, sergeant? If I were to take that weapon, People's Exhibit 19, and fire a bullet into somebody and that bullet was extracted by a doctor, and then you took the weapon and fired a test bullet into a bale of cotton and took two out under that machine that you told the jury about, you can match up the riflings and show that both bullets came out of that identical barrel? A. If the bullet from the body has not been too badly distorted, yes.

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Q. Did you take all of those bullets that were turned over to you, the six that Walsh took from the scene of the homicide and the two that the medical examiner took out of the corpse, and examine them microscopically? A. I did.

Q. And did you examine them microscopically with a test bullet from People's Exhibit 19, that weapon? A. I did.

Q. Will you tell the jury what the examination and inspection disclosed? A. Some of the bullets I found were fired from that gun and some were too deformed to tell what gun they were fired from. Some of the bullets are known as half-metal case. Those are bullets with a metal jacket at the point. I think there were four of those and four that are called copper-coated.

Q. May I direct you in my examination—

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The Court: I do not think he has finished.

Mr. Turkus: He has not but I want to specifically direct his attention.

The Court: Let him finish.

A. The copper-coating is different from the copper jacket. The copper-jacketed bullet is a jacket of solid copper. The copper-coated bullet is, let us say, a copper-plated bullet. It is just a copper flashing that is on a lead bullet.

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By the Court:

Q. Did you find that any of those bullets had not been fired from that gun? A. On four there was not enough left to see whether or not they had been fired from this particular gun. Four I could identify and four I could not.

Q. How many did you examine in all? A. I think I had eight bullets.

Q. That is two from Dr. Marten and six from the detective who made the search of the premises? A. Yes, sir.

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Q. How about the two that came from Dr. Marten? A. One I could identify and one I could not.

Q. Did you identify that one? A. I did.

Q. You say that was fired from that gun? A. Yes, sir.

Q. And of the other six, how many did you identify? A. Three.

By Mr. Turkus:

Q. Sergeant, may I take you step by step in

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this examination. Is it that you had eight bullets turned over to you, six recovered at the scene and two taken out of the corpse? A. That is correct.

Q. Of the eight bullets that you had to inspect, were four half-metal case bullets and the other four copper-coated bullets? A. Yes.

Q. Are those two different types of ammunition? A. Yes.

1289

Q. Will you take this sheet of paper and draw a H.M.C. bullet and a copper-coated bullet so the jury can get a visual idea of it? A. The first I have marked "H.M.C." The inner portion would be lead and that portion that I have separated,—while actually it is close to the lead. I have separated so that you could see it,—that is a copper jacket that extends from that point up to the nose and down to here (indicating) leaving lead bare from that portion down. Now a copper-coated bullet is simply a lead bullet that has been copper-plated and it simply has a thin flash of copper all over it.

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Q. Sergeant Butts, in your testimony you have been referring to these exhibits in evidence, People's Exhibits 5, 6, 7, 8, 9, 10, 11 and 12, namely the eight bullets, there as bullets. Is that the term that is used to distinguish them from cartridges? A. Oh, yes. The cartridge is the complete assembly. A cartridge would be the shell or case, the primer, the powder, and the bullet. The bullet is the projectile.

Q. It is known as a cartridge before it is fired? A. Yes.

Q. And the projectile is called by you scientific men a bullet? A. That is correct.

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1291

Q. I want to get down to an examination bullet by bullet of these eight that you had. Will you take that bullet, the one that had the markings on by Dr. Marten, "M.R." That should be People's Exhibit 6, or maybe 5. A. People's Exhibit 6 is a half-metal case bullet.

Q. People's Exhibit 6, that half-metal case bullet, is that the one marked "M.R." by Marten? A. It is.

Q. Did you examine that microscopically with a test bullet from People's Exhibit 19, the firearm? A. I did.

1292

Q. What did your test disclose? A. That in my opinion People's Exhibit 6 was fired from Exhibit 19.

Q. And can you say that with reasonable certainty? A. Yes.

Q. The other bullet which the medical examiner turned over to your office, the "M.M." bullet, People's Exhibit 5 in evidence, what did you find about that? A. That is a copper-coated bullet.

Q. As distinguished from the other bullet which was a half-metal case? A. Yes, and that bullet I was not able to identify.

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Q. Was that bullet too deformed to identify to that or any other gun? A. Yes.

Q. So that one of the bullets turned over by Marten was a half-metal case bullet and the other was a copper-coated bullet, is that right? A. Yes.

Q. Of the six bullets that were recovered at the scene of the homicide, how many were half-metal case bullets and how many were copper-coated bullets? A. Three and three.

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Q. Take a look at bullets "F. W. 1", "F. W. 5" and "F. W. 6". "F. W. 1" is People's Exhibit 8, "F. W. 5" is People's Exhibit 11, and "F. W. 6" People's Exhibit 12. A. 8, 11, and 12, is that what you said?

Q. That is right. A. People's Exhibit 8 is a half-metal case bullet. That bullet I was able to identify.

Q. And do you identify it as having been fired from People's Exhibit 19? A. I do.

1295

Q. Now check "F. W. 5" People's Exhibit 11. A. That bullet is a half-metal case bullet.

Q. And are you able to identify that bullet as having been fired from People's Exhibit 19 in evidence? A. I am.

Q. And do you say that with reasonable certainty? A. Yes.

Q. Take "F. W. 6", People's Exhibit 12 in evidence. A. That bullet is a half-metal case bullet and that bullet I identified as having been fired from Exhibit 19.

1296

Q. In other words, Sergeant Butts, the four half-metal case bullets that were turned over to you, three from the scene and one from the body, are all attributed to having been fired from People's Exhibit 19, that weapon right on the desk? A. That is correct.

Q. Now taking bullets marked "F. W. 2", "F. W. 3", "F. W. 4",—"F. W. 2" is People's Exhibit 7, "F. W. 3" is People's Exhibit 9, and "F. W. 4" is People's Exhibit 10. A. People's Exhibit 7 is a copper-coated .38 special bullet. That I could not identify.

By the Court:

Q. Were all of the copper-coated bullets so badly smashed that you could not identify them?

A. That is correct, sir.

Q. Is the purpose of copper jacketing to protect the lead from deformation? A. It does.

Q. But where only plated or coated, the metal is not protected so they deform readily? A. Yes, and the copper flashing or plating tends to move from its original place. It may be high up on the boring surface but it is dragged down to a place other than where it was originally so it may have gotten a mark up at the top of the boring surface and just brought down toward the bottom. It is just like flakes on the bullet.

1298

Q. Now, sergeant, going back to that weapon, People's Exhibit 19, you told us earlier in your examination that your examination and inspection disclosed that at the last time of firing four bullets had been fired out of that gun. A. Yes.

Q. Now, the four half-metal case bullets that you attribute to having been fired from that gun, did you examine them to see if there was any copper coating on them? A. I did.

1299

Q. Was there any copper coating? A. There was not.

Q. Had copper-coated bullets first been fired through that weapon, People's Exhibit 19, and then later four half-metal case bullets, would there have been a copper coating on those four "H. M. C.'s" or half-metal coat bullets? A. I would have found some copper coating on some of them at least.

Q. So can you say this with reasonable cer-

1300

Henry F. Butts—For People—Direct

tainty, sergeant, that People's Exhibit 19, the weapon, fired the four "H. M. C.'s" or half-metal case bullets? A. Yes.

Q. And that some other gun or weapon of similar make and character fired the four copper-coated bullets? A. That would be my opinion from my examination of the copper-jacketed bullets and I ran a patch through the barrel and I did not get any copper flaking from copper-coated bullets.

1301

Q. Is that conclusion established by two factors, the conclusion that the four "H. M. C.'s", the half-metal case bullets, were fired from People's Exhibit 19, and the four "C. C.'s" or copper-coated bullets were fired from another gun of similar make and calibre, and are these the factors: The examination of the cylinder showing four discharges— A. Yes.

1302

Q. And the residue of copper that you would have found on those "H. M. C." bullets as you have described to the jury? A. That is one thing and then the patch that I ran through the barrel would have picked up some flaking from a copper-coated bullet.

Q. So then do I understand clearly of the eight bullets the four "H. M. C.'s" came out of the weapon, People's Exhibit 19, and the four copper-coated bullets issued out another weapon of similar make and character? A. That is my opinion.

Mr. Turkus: Offered for cross-examination.

Mr. Barshay: No cross-examination. I move to strike out his testimony with re-

Max Kaufman—For People—Direct

1303

spect to defendant Buchalter as not binding upon him, sir.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Cuff: Same motion with respect to defendant Weiss.

The Court: Denied.

Mr. Fischbein: Defendant Louis Capone has no questions and makes the same motion made by the other counsel.

The Court: Denied.

1304

Mr. Fischbein: Exception.

Mr. Turkus: May I exhibit People's Exhibit 19, the weapon, to the jury?

The Court: Yes.

MAX KAUFMAN, residing at 1801 First Street, Peoria, Illinois, called as a witness on behalf of the People, being first duly sworn, testified as follows:

1305

Direct examination by Mr. Turkus:

Q. Mr. Kaufman, are you married? A. Yes, sir.

Q. And do you reside with your wife and family in Peoria, Illinois? A. That is right, sir.

Q. And in cooperation with the District Attorney's office and police department of Peoria, did you return to New York City to testify in this case? A. Yes, sir.

Q. Did you live in Brooklyn? A. Yes, sir.

1306

Max Kaufman—For People—Direct

Q. How long did you live in Brooklyn? A. About 25 years.

Q. In September, 1936, did you reside in the Borough of Brooklyn? A. Yes, sir.

Q. And specifically did you live at 621 Lefferts Avenue, Brooklyn? A. Yes, sir.

Q. Is that an apartment house? A. Yes, sir.

Q. And is it located on the corner of Lefferts and Albany Avenue in Brooklyn? A. Right, sir.

1307

Q. When you lived at 621 Lefferts Avenue in Brooklyn in September, 1936, did you own an automobile? A. Yes, sir.

Q. Was it a Chevrolet automobile, 1936, two door, hard top sedan, black in color? A. Right.

Mr. Turkus: I ask that this photograph be marked for identification.

(Photograph marked People's Exhibit L for identification.)

1308

Q. Mr. Kaufman, I show you People's Exhibit L for identification, and ask you if that is substantially a photograph of the premises in which you lived and the surrounding locale? A. Yes, sir, I lived right here at the white entrance.

Q. Where the white entrance is on that photograph? That is where you lived in September, 1936? A. Yes.

Q. And the building with the white entrance is 621 Lefferts Avenue? A. That is correct.

Mr. Turkus: It is offered in evidence.

Mr. Barsbay: Objected to as not binding on the defendant.

Max Kaufman—For People—Direct

1309

Mr. Cuff: Same objection.

The Court: Let me see it. Overruled.

Mr. Barshay: Exception.

(People's Exhibit L for identification received and marked People's Exhibit 20 in evidence.)

Q. Mr. Kaufman, on Friday, September 11, 1936, did you use your Chevrolet car? A. Friday, yes.

1310

Q. And what time did you get through using it? A. It must have been about one o'clock at night.

Q. And would you say one o'clock in the morning of Saturday, September 12, 1936? A. That is right.

Q. When you got through using your car, did you park it? A. Yes, sir.

Q. Where did you park it? A. Right in front, on the other side of the street, across the street.

Q. Will you look at People's Exhibit 20 now in evidence and indicate to the jury where you parked your car in front of your premises? A. I parked it right over here (indicating).

1311

Q. Is it about where the other automobile is? A. Well, I would not say exactly. Right across the street from the house it was, but the other side of the fence. There was a fence around there at that time.

Q. At that time when you parked the car, that Saturday morning early, was there a fence similar to the fence on People's Exhibit 20? A. Right.

Q. And was your car parked directly opposite? A. Opposite the entrance.

Max Kaufman—For People—Direct

Mr. Turkus: May I exhibit People's Exhibit 20 to the jury?

The Court: Yes. Objection is overruled.

Mr. Kaufman, when you parked your automobile in front of 621 Lefferts Avenue in Brooklyn Saturday morning, September 12, 1936, you lock your car? A. Yes, sir.

At that time did your car have a radio in it? A. Yes, sir.

Did the ignition key, that is the key that starts the engine or ignition key, was that the key that fitted the handle of the lock? A. Yes, sir.

Did you take the key with you after you closed the door? A. Yes, sir.

Did anybody else to your knowledge have a set of keys? A. No, sir.

Mr. Barshay: I object to that.

The Court: Overruled.

Mr. Barshay: Exception. I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

When you took the keys and you went across the street to your apartment, did you go across the street to sleep? A. Yes, sir.

Did you give anybody permission or authority to use your automobile?

Mr. Barshay: Same objection.

The Court: Overruled.

Max Kaufman—For People—Direct

1315

Mr. Barshay: Exception. I move to strike the answer out.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you give anybody permission or authority to use your automobile? A. No, sir.

Q. Saturday morning what time approximately did you wake up? A. I woke up about nine o'clock.

Q. Did you go downstairs? A. Yes.

Q. Did you go down there with intention of using your car? A. That is right.

1316

Mr. Barshay: Object to it.

The Court: Overruled.

Mr. Barshay: May I take one objection to this whole line of inquiry? Is that all right, sir?

The Court: I would rather you make your objections, unless you make the ground of objection more specific. Then one ruling may be enough to cover all.

Mr. Barshay: On the ground that it is not binding on the defendant Buchalter and on the further ground that it is evidence of another crime that has nothing to do with this.

1317

The Court: All evidence so far is taken subject to checking up and connection.

Mr. Barshay: So when I say the objection, sir, I won't set forth the grounds. Those are the grounds, sir.

The Court: It only goes to the order of proof.

1318

Max Kaufman—For People—Direct

Mr. Talley: Also for the other defendants.

The Court: Yes, same ruling. Overruled.

Q. I think we got to the point in your testimony, Mr. Kaufman, where you had parked your car about one or two o'clock Saturday morning in front of your house, locked it up and went home to sleep; is that right? A. That is right.

1319

Q. That nobody else had any keys and you gave nobody permission to use it? A. Correct.

Q. That when you woke up about nine o'clock in the morning, you went down with the intention of using your car? A. Yes, sir.

Q. When you got downstairs was the car there? A. No.

Mr. Barshay: Same objection. Same exception.

The Court: Overruled.

1320

Q. When you found your car missing, Mr. Kaufman, did you go some place? A. I went to the police station.

Q. Do you recall whether that was on Empire Boulevard near Prospect Park? A. That is right.

Q. Did you there make a report of the occurrence in connection with your automobile?

Mr. Barshay: Same objection.

A. I just made a report that my car was stolen, that was all.

Max Kaufman—For People—Direct

1321

Mr. Barshay: Move to strike the answer out.

The Court: Denied.

Mr. Barshay: Exception.

Q. Do you recall whether there was a detective there by the name of Jarvis or not? I know it is a long time ago. A. It is a long time ago but there was a detective there as far as I know.

Q. On Sunday, September 13th, at about noon time, did you hear something with respect to your automobile; yes or no? A. Yes, sir.

1322

Q. At that time did you receive a telephone call? A. Yes, I received a telephone from the police station from Miller Avenue.

Q. After you received the telephone call from the police station at Miller Avenue, did you go some place? A. I went to the police station.

Q. And did you there see your automobile? A. Yes, sir.

Q. Did you there identify your automobile? A. I did.

Q. Now did you look at your car? Did you examine it at the police station? A. Yes, I looked at it. I did.

1323

Q. When you had parked the car you told us before you had a radio in it, is that right? A. That is right.

Q. When you saw the car Sunday in the Miller Avenue police station and identified it, was the radio in the car? A. No.

Mr. Barshay: Same objection, sir.

The Court: Overruled.

1324

Mar Kaufman—For People—Direct

Mr. Barshay: Exception. I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Was the radio missing? A. Yes, sir.

Q. Had you given anybody permission to take the radio?

Mr. Barshay: Same objection.

1325

A. No, not that I know of.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

1326

Q. Now when you examined the car, did the car have on it when you examined it at Miller Avenue on Sunday after you got the call from the police station, did it have on it the license plates that had been issued to you by the Bureau of Motor Vehicles and the plates that were on the car when it was stolen? A. No.

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception. I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Will you answer? A. It did not have my license plates. It had somebody else's.

Max Kaufman—For People—Direct

1327

Q. Did you ever recover your license plates back?

Mr. Barshay: Same objection.

A. No.

The Court: Overruled.

Mr. Barshay: Exception, and I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

1328

Q. So that when you examined your car, Mr. Kaufman, in the Miller Avenue station on Sunday after it had been recovered by the police, it had different license plates on it? A. Yes, sir.

Q. Did you notice anything else different about your car when you saw it in the Miller Avenue station on Sunday after it had been recovered by the police as contrasted with it when you parked it that Saturday morning? A. You mean the way it looked?

Q. Yes. A. Yes, sir, it was all powdered up with some kind of powder, for fingerprint—I don't know what it was for but it was all white.

1329

Q. Did you see a wire? A. Yes, there was a wire that went from the ventilation to the ignition.

Q. Mr. Kaufman, I show you People's Exhibits 13 and 14 in evidence, and ask you if that is a front and rear view of the automobile concerning which all these things that you have related to the jury happened? A. That was the color of the car and that is the model that I had.

1330

Max Kaufman—For People—Cross

Mr. Turkus: Offered for cross-examination.

Cross-examination by Mr. Talley:

Q. Mr. Kaufman, was the radio in the car when you bought the car? A. You mean when I purchased the car?

Q. Yes. A. No, I installed it after I purchased it.

1331

Q. What kind of a car was it? A. 1936 Chevrolet.

Q. What kind of radio was it? A. I think it was a Motorola.

Q. Where did you buy it? A. I bought it on Graham Avenue.

Q. Do you remember how much you paid for it? A. I think it was about \$33, something like that.

Q. Was it a new radio? A. Yes.

Q. And you had it installed in the car? A. I had it installed there.

1332

Q. You left the car about one o'clock in the morning, did you? A. Around that time.

Q. In front of your residence which was 621 Lefferts Avenue, is that right? A. Yes, sir.

Q. And in front of your door? A. In front of, that is across the street.

Q. Across the street from your residence? A. Yes.

Q. Then you went upstairs and went to bed, is that right? A. Yes.

Q. That was one o'clock on Saturday morning? A. That was on Friday night; that is already Saturday morning.

William R. Jarvis—For People—Direct

1333

Q. Friday night you left it there. If you left it there at one o'clock that would be one a.m. Saturday morning? A. That is right.

Q. But you missed it about nine o'clock? A. About a little after nine on Saturday morning.

Mr. Turkus: A matter of eight hours.

The Witness: Yes.

Mr. Turkus: That is all and thank you.

1334

WILLIAM R. JARVIS, detective, shield 479, attached to the 75th squad, New York Police Department, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Detective Jarvis, are you attached to the police force of the City of New York? A. I am.

Q. And how many years have you been a police officer? A. Seventeen.

1335

Q. Of the seventeen years that you have been in the department, how many years have you been assigned to the detective division? A. Over nine.

Q. In September, 1936, what squad were you attached to? A. 71st squad, at Empire Boulevard, Kings County.

Q. On September 12, 1936, were you assigned to the 71st squad? A. I was.

Q. Was it then located on Empire Boulevard? A. It was.

1336

William R. Jarvis—For People—Direct

Q. Did you do a tour of duty that day? A. I did.

Q. What hours did you work? A. From 8:30 a.m. until 6 p.m.

Q. At or about 10 o'clock in the morning did a man come in to you by the name of Kaufman?

A. He did.

Q. And did he make a report of a stolen automobile?

1337

Mr. Barshay: I object to it. It is incompetent.

The Court: Purely collateral. Overruled.

Mr. Barshay: Exception.

A. He did.

Q. What was the name of the individual? A. Max Kaufman.

Q. Did you recognize him when he left the stand? A. I recognized him before he went into the court.

1338

Q. And was that the Max Kaufman who made the report of the loss of an automobile? A. It was.

Q. Without stating the conversation, did Mr. Kaufman tell you what happened to the car as far as he knew? A. He did.

Q. What was the license plates of Kaufman's car as reported to you? A. L-8359 New York.

Q. 1936? A. 1936.

Q. Did you get a full description of the property that Mr. Kaufman reported stolen? A. I did.

Q. Did you get the motor number of the car which he reported stolen? A. I did.

William R. Jarvis—For People—Direct

1339

Q. What was the motor number? A. May I refer—

Q. Naturally. A. Motor number was 6376729. That was verified with the B. of I. in the Police Headquarters in Manhattan.

Q. Did you get a serial number? A. I did.

Q. What was the serial number? A. 46192.

Q. And did you get a description of the car? A. I did.

Q. What was the description? A. A 1936 Chevrolet sedan, painted black.

1340

Q. When that report was made and you received a full description of the property reported stolen, did you cause a teletype and radio alarm to issue? A. I did.

Q. What was the alarm that issued? A. Alarm No. 11933.

Q. And what was it for? A. It was for a 1936 Chevrolet sedan bearing the license number and motor and serial numbers given before in this testimony.

Q. Did it give the name of the owner, Max Kaufman, and his address? A. It did.

1341

Q. And did the alarm report that vehicle stolen? A. It did. It reported his car was stolen.

Q. And in pursuance of police duties, when that alarm goes out is the police department and all its various members on watch for that motor vehicle? A. They are.

Q. On September 13, 1936, at about 12:30 at noon, did you receive a message from Detective Schiesser? A. I received a message from somebody in the 75th squad that my automobile reported stolen on 1/19/33 had been recovered but

1342

William R. Jarvis—For People—Direct

the plates were missing and I should cancel my alarm, it was used in a crime.

Q. And did you cancel the alarm upon the recovery of the car? A. I did.

Q. And was there an alarm, a teletype alarm, sent out over the wire cancelling the lookout alarm for that Max Kaufman stolen Chevrolet? Is that the procedure? A. You mean prior to the recovery?

1343

Q. No, after the recovery. When the car was recovered? A. Yes.

Q. Does another alarm go out over the wires? A. No, the alarm No. 11933 cancelled in so far as car; plates still missing, which means to keep looking for those plates.

Q. To your knowledge were the plates ever recovered? A. They were not.

Mr. Turkus: Offered for cross.

(No cross-examination.)

1344

Mr. Climenko: If your Honor pleases, the defendant moves to strike out the testimony of the witness Jarvis upon the ground it is not material to the issue here; it is not binding on any of the defendants and has to do with the commission of another crime.

The Court: Denied.

Mr. Climenko: Exception.

Mr. Rosenthal: Defendant Capone joins in.

Mr. Talley: We all join in.

The Court: Denied.

Gentlemen of the jury, please do not discuss the case; let nobody talk to you

Simon P. Ambraz—For People—Direct

1345

about it. Keep your minds open. Remember the other instructions. Please follow them.

The defendants are remanded.

(Thereupon an adjournment was taken to Wednesday, October 22, 1941, at 10 a. m.)

Brooklyn, N. Y., October 22, 1941.

1346

TRIAL RESUMED

SIMON P. AMBRAZ, United States Army, Camp Upton, New York, called as a witness in behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Are you a captain in the United States Army? A. Yes, sir.

Q. Where is your post? A. Camp Upton, New York.

1347

Q. Are you captain in any particular special branch of the Government service? A. Yes, sir, military police officer.

Q. Are you captain of the military police at Camp Upton, New York? A. Yes.

Q. Prior to being captain in connection with the military police of the United States Army force were you attached to the Police Department of the City of New York? A. Yes, sir.

1348

Simon P. Ambraz—For People—Direct 8

Q. How many years were you a member of the Police Department? A. Twenty-six years.

Q. Of the twenty-six years you were a police officer, how many years were you a detective? A. About twenty years.

Q. During the month of September, 1936, were you a detective? A. Yes, sir.

Q. What post or command were you assigned to? A. I was connected with the Homicide Squad, Brooklyn.

1349

Q. On Sunday, September 13, 1936, did you have a conversation with Detective Schiesser? A. No, sir, I do not recall that.

Q. Did you see an automobile bearing license plates L-16-67, N. Y., 1936? A. No, sir.

Q. Did you conduct an investigation in connection with license plates L-16-67 N. Y. 1936 on Sunday, September 13, 1936? A. Yes, sir.

Q. Were those the circumstances under which you went to the home of one Abraham Waxman? A. Yes, sir.

1350

Q. In conducting your investigation as to the ownership of the plates L-16-67 N. Y. 1936, did you ascertain the owner of those plates? A. I did.

Mr. Barshay: I object to it as incompetent, immaterial and irrelevant with respect to the defendant Buchalter; it does not tend to connect him with the commission of the crime.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. At approximately what time on Sunday morning, September 13, 1936, Captain, did you

Simon P. Ambraz--For People--Direct

1351

learn that the plates L-16-67 N. Y. 1936, were in the possession of the police of the City of New York?

Mr. Barshay: I make the same objection.

The Court: It calls for a conclusion. Is there objection on that ground?

Mr. Barshay: On that ground too.

The Court: Sustained on that ground.

Q. At approximately what time on Sunday morning, September 13, 1936, did you start your investigation?

1352

Mr. Barshay: I make objection on the ground stated.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Approximately between 7 and 7:30 o'clock.

Q. Was that at the time when an alarm issued for the plates? A. No, information was received that the license plates bearing those license numbers, L-16-67 N. Y. was seen leaving the premises 725 Sutter Avenue.

1353

Mr. Barshay: I move to strike that out as not binding.

The Court: Strike it out as hearsay.

Mr. Turkus: Does your Honor strike out the time? I asked him what time he started the investigation.

The Court: He made an investigation. I assume your purpose in putting him on

non P. Ambraz—For People—Direct

he stand is to show ownership of the license plates that were on the car.

Mr. Turkus: That is true.

The Court: Now, that can be shown in a legal way, according to the rules of evidence.

Mr. Turkus: I have a right to bring out what time in the morning he started his investigation.

The Court: That is all right.

Mr. Turkus: That is all I wanted from that answer.

Mr. Turkus:

Will you tell me the time when you started investigation of the ownership of the plates 7 N. Y. 1936, on Sunday, September 13,

A. About 7:30 A. M.

Did you ascertain the name and address of owner of those plates?

Mr. Barshay: I object.

The Court: Objection overruled. Yes or no.

Mr. Barshay: Exception.

Yes, sir.

After you made your investigation and find with respect to the ownership of the plates, where did you go? A. I went to the premises Newport Street.

Whom there did you see? A. One Abraham man.

Without stating what the conversation was answer yes or no—did you have a conversation

Simon P. Ambraz—For People—Direct

1357

with Abraham Waxman in connection with plates L-16-67 N. Y. 1936?

Mr. Barshay: I object on the same grounds.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. After you had that conversation with Abraham Waxman in connection with the plates, did you go somewhere? A. Yes, sir.

1358

Q. Did Abraham Waxman accompany you? A. Yes, sir.

Q. Where did the both of you go? A. We went to 384 East 96th Street.

Q. In what portion of the premises did you go? A. We went directly to the garage.

Q. In the rear of the premises? A. In the rear of the building, yes, sir.

Q. Did Waxman point out the garage to you?

Mr. Barshay: I object to that as not binding on the defendants.

1359

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He did.

Q. Did you look at that garage? A. I did.

Q. While you were looking at the garage was Waxman talking to you? A. Yes, sir.

Q. What did you observe in connection with the garage doors?

Mr. Barshay: I make the same objection, and on the further ground that it calls for evidence of another crime.

1360

Simon P. Ambraz—For People—Direct

The Court: Objection overruled.

Mr. Barshay: Exception.

A. The garage door was forced and the lock was removed.

Mr. Barshay: I move to strike out the answer.

The Court: Motion denied.

Mr. Barshay: Exception.

1361

Q. Was that examination of the garage door and the lock made in the presence of Abraham Waxman? A. Yes, sir.

Q. Were the garage doors open so a view of the inside was had? A. No, sir, they were closed, but no lock on it.

Q. After the discovery had been made by you, were the garage doors opened by either you or Waxman? A. Yes, sir, I opened the garage door.

Q. Was there a motor vehicle inside? A. Yes, sir.

1362

Q. Were there any license plates on that motor vehicle? A. No, sir.

Mr. Barshay: Will your Honor give me one general objection to all this line of inquiry so that I will not interrupt Mr. Turkus, and one exception?

The Court: Yes.

Mr. Turkus: He is your witness.

Mr. Barshay: I move to strike out all of his testimony on the ground it is incompetent, immaterial and irrelevant, it has not connected the defendant Buchalter with the commission of the crime.

Motion denied. Exception.

Mr. Talley: The same applies to the other defendants. (No questions by defense.)

ABRAHAM WAXMAN, residing at 1167 Willmohr Street, in the Borough of Brooklyn, City and State of New York, called as a witness in behalf of The People, after being duly sworn, testified as follows:

1364

Direct examination by Mr. Turkus:

Q. Mr. Waxman, what is your business or profession? A. Barber.

Q. How many years have you been a barber? A. About 40 years.

Q. Did you list your address as 1167 Willmohr Street, Brooklyn, with the stenographer? A. Yes, sir.

Q. Do you reside there with your wife and family? A. Yes, sir.

Q. Did you live there in September of 1936? A. Yes, sir.

1365

Q. Was Willmohr Street at one time known by another name? A. Yes, sir.

Q. What is the other name? A. Newport Street.

Q. How do you spell that? A. N-e-w-p-o-r-t.

Q. In 1936, and specifically during the month of September, 1936, did you own an automobile? A. I did.

Q. What kind of an automobile was it? A. It was a Ford sedan, '29 four-door sedan.

1366

Abraham Waxman—For People—Direct

Q. A four-door sedan? A. Yes, sir.

Q. What was its color? A. Grey.

Q. Do you still own that car? A. I do not.

Q. When did you sell it? A. The latter part of 1939.

Q. Now, Mr. Waxman, in September, 1936, when you owned this grey Ford sedan, do you recall the license plates? A. Yes, sir.

Q. What are the numbers? A. L-16-67.

1367

Q. Did you garage that automobile in a garage? A. Yes, sir.

Q. Where did you keep the garage or maintain the garage?

Mr. Barshay: May I have the same objection on the same ground with respect to this witness?

The Court: Yes, the same ruling.

Mr. Barshay: Exception.

A. 384 East 96th Street.

Q. That is in Brooklyn? A. Yes, sir.

1368

Q. What type of a garage was it? A. It was a three-car garage, with no partition, but a door for each occupant.

Q. Is that commonly called a private garage? A. Yes, sir, I think you would call it so.

Q. How many blocks away from your home was this garage? A. Two and one-half blocks.

Q. What was the method you used to close or lock the doors of the garage? A. Just an ordinary cheap 10-cent lock.

Q. Would you describe it as an ordinary padlock? Would that be a fair description? A.

Well, it would be just an ordinary 10-cent lock such as you buy in a 5-and-10 cent store.

By the Court:

Q. Is that in the Canarsie section? A. No, sir, it is the dividing line between the Canarsie line and the Canarsie district—East New York and East Flatbush—right on the dividing line. That is where I live, right on the dividing line.

Q. (Mr. Turkus) This garage is in what they call the Brownsville district? A. No, sir, East Flatbush.

1370

Q. Does that street run one block away from the boulevard? A. No, sir, that street, I believe, begins at Lenox Road.

Q. The street runs north and south? A. Are you referring to my home or the garage?

Q. The street where your home is. A. That street commences at East New York, yes, sir, and that is 98th Street, and Newport Street.

Q. That is in the section that meets with Rockaway Boulevard? A. No, sir, Rockaway Parkway.

1371

Q. I mean Parkway? A. One block this side.

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit M for identification.)

Q. How far south is Church Avenue from that? A. One block from Church Avenue, one block south.

1372

Abraham Warman—For People—Direct

By Mr. Turkus:

Q. I show you People's Exhibit M for identification and ask you if that substantially portrays the locale there on the picture as it was in September, 1936, including the row of garages in which you stored that Ford automobile. Can you recognize that? Look where the garages are. A. I believe this is the beginning of the alley.

1373

Q. That is the side entrance view? A. The beginning of the alley.

Q. Do you recognize it now? A. Yes, sir.

Mr. Turkus: I offer it in evidence.

Mr. Barshay: The same objection with respect to the exhibit as the objection made to the receipt of the testimony.

The Court: Same ruling.

Mr. Barshay: Exception.

(Received in evidence and marked People's Exhibit No. 21.)

1374

Mr. Turkus: May I submit People's Exhibit 21 for examination by the jury?

The Court: Yes.

By the Court:

Q. So the jury will understand, is Rockaway Parkway a continuation of Rockaway Avenue? A. Rockaway Parkway and Rockaway Avenue, I do not see any connection there. Rockaway Avenue in Brooklyn is about seven or eight blocks further east of Rockaway Parkway.

Abraham Warman—For People—Direct

1375

Q. Where does Rockaway Parkway begin? A. Rockaway Parkway begins at I believe East New York Avenue.

Q. And runs to Canarsie? A. It runs out quite a bit, yes, sir.

Q. Where this garage is located was a short distance from the car barns on Church Avenue Line, wasn't it? A. Your Honor, I really am not familiar. I know there is on Hegeman Street a car barn, but I should judge it would be about a mile away.

1376

Q. I want to get the location. I was under the impression the car barns were at Rockaway Avenue and Church. A. No, it is not there; it is on Hegeman Street, around New Lots Avenue.

Q. My recollection of the car barns probably is the old location; it goes back about 40 years. A. Most likely yes, but it would be about a mile from the garage. That street is called Hegeman Avenue or Hegeman Street, I believe.

Mr. Turkus: I ask that this photograph be marked for identification.

1377

(Received and marked People's Exhibit-N for identification.)

Q. I hand you People's Exhibit N for identification and ask you if that is another view of the garages including the one in which you stored your Ford automobile, and I ask you whether it truly represents, substantially, the conditions as they existed in September of 1936. A. Exactly.

Mr. Turkus: I offer it in evidence.

1378

Abraham Warman—For People—Direct

(Received without objection and marked People's Exhibit 22 in evidence.)

Q. As we face this photograph, People's Exhibit 22, and looking at it again, can you indicate which one was the garage you stored your grey Ford in? Can you indicate it or pick it out? A. The first one.

Q. The first garage as you face the photograph on the right-hand side? A. Yes, sir.

1379

Mr. Turkus: May I show this exhibit, People's 22, to the jury?

The Court: Yes.

Q. Mr. Waxman, did you use your Ford car on Labor Day, September, 1936? A. Yes, sir.

Q. When you got through using it did you store it in the garage? A. Yes, sir.

Q. And specifically, did you store it in a garage portrayed on People's Exhibit 22 in evidence? A. Yes, sir.

1380

Q. Did you have any difficulty in the operation of the car? By that, I mean did you get flat tires at about that time? A. I got a flat tire on Labor Day night.

Q. Did you store the flat shoe in the rear part of the car? A. Inside.

Q. Subsequently did you cause that flat shoe to be brought to a repair man? A. Yes, sir.

Q. Was that taken there by your son? A. Yes, sir.

Q. Thereafter did you personally go to the repair shop for that shoe? A. I did.

Q. Did you drive down in your Ford car? A. I did.

Q. Did you take the shoe with you or was it put on the car? A. The garage man put it on the wheel and I drove back to the garage.

Q. Was the spare tire then put on the rack, back on the rack, the tire rack? A. The one that was repaired was put on the wheel and the one taken off the wheel was put on the rack.

Q. After you had the deflated shoe changed, which had been flat and subsequently repaired, put on the car, did you drive your car back to the garage portrayed on People's Exhibit 22 in evidence? A. Yes, sir.

Q. Did you lock the car in the garage? A. Yes, sir.

Q. Approximately when was that, to the best of your recollection? A. I believe it was on Wednesday night.

Q. Did you see the car after that and before the arrival of the detectives at your home? A. No, sir.

Q. Was that a car which you used on week-ends? A. Mostly, yes, sir.

Q. You were one of those Sunday drivers? A. Yes, sir.

Q. On Sunday morning did the detectives come to your home? A. Two detectives.

Q. Did you recognize Captain Ambraz, who preceded you out of the court-room as you came in? A. Yes, sir.

Q. Was he one of the detectives who called to see you? A. Yes, sir.

Q. The law does not permit you to tell us what

1384

Abraham Warman—For People—Direct

the detectives said to you or what you said to the detectives, but I can go this far: Did the detectives talk to you? A. They did.

Q. Did they talk to you in reference to license plates L-16-67—yes or no? A. Yes, sir.

Q. Did they talk to you in reference to the ownership of the plates? A. They asked me if I had a car with license plates 16-67.

Q. Did you answer the detectives? A. I said, "Yes, sir, I have a car."

1385

Q. Well, were you asked where the car was? A. They asked me, "Where is your car?" I said, "In the garage."

Q. After that talk what happened? A. We went to the garage.

Q. You and the two detectives? A. Yes, sir.

Q. Can you estimate what time of the morning you went there? A. About eight o'clock.

Mr. Talley: Is this Sunday morning?

Mr. Turkus: Yes.

1386

Q. That Sunday we speak of was Sunday, September 13, 1936? A. I think it was.

Q. When the detectives accompanied you to the private garage, did they go with you to the garage exhibited on People's Exhibit 22 in evidence? A. Yes, sir.

Q. That was the place where you had stored your car after you had used it last? A. Yes, sir.

Q. When you got to the garage what did you notice in connection with the garage doors and the lock? A. The lock had been broken.

Q. When you had locked the garage doors, was the lock intact? A. It was locked, properly locked.

Q. Were you ever able to use that lock again?

A. Never.

Q. Did you give anyone permission to open up your garage? A. No, sir.

Q. Were the garage doors opened by the detectives or yourself to look at the car inside?

A. Well, when we got to the garage the first thing I did was to look in through the window, and when I saw my car there I felt safe. Then when the detectives opened the door the first thing they noticed was the plates were off.

1388

Q. Had you given anyone permission to take your plates? A. Never.

Q. Was that the first knowledge or intimation you had that your plates were stolen—under the circumstances you have related to this jury? A. Ye., sir.

Q. Was it through the visit of the detectives that you first learned the plates were gone? A. That is right.

Mr. Turkus: I ask that this photograph be marked for identification.

1389

(Received and marked People's Exhibit O for identification.)

Q. I show you People's Exhibit O for identification and ask you if you can identify it. A. That is right.

Q. When you say "That is right," what is it? A. This was my car.

Q. Were you present when the detectives took that picture? A. No, sir, I don't think so.

Q. Is that the way the car looked without the plates? A. Exactly.

1390

Colloquy

Mr. Turkus: People's Exhibit O for identification is offered in evidence.

(Received, without objection, and marked People's Exhibit 23 in evidence.)

Mr. Turkus: May I exhibit People's Exhibit 23 in evidence to the jury?

The Court: Yes.

Mr. Turkus: The witness is offered for cross examination.

1391

Defense Counsel: No questions.

Mr. Barshay: I move to strike out the testimony on the grounds previously set forth.

The Court: Motion denied.

Mr. Barshay: Exception.

And on the further ground that it is evidence of another crime not connected with this case.

The Court: Motion denied.

Mr. Barshay: Exception.

1392

Mr. Talley: May I have the exact location of this garage which is indicated on People's Exhibit 22?

Mr. Turkus: The first garage to the right as you look at the photograph and in which was stored the Ford car.

Mr. Talley: Will you designate the place?

The Court: 384 East 96th Street, he said.

Mr. Talley: 384 East 96th Street is the approximate location?

Mr. Turkus: Yes.

Mr. Talley: I just wanted to know where it was.

Harold D. Rosen—For People—Direct

1393

HAROLD D. ROSEN, residing at 1611 Perkimonen Avenue, Reading, Pennsylvania, called as a witness in behalf of the People, after being duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. How old are you? A. Thirty years old.

Q. Do you reside at the address listed with the stenographer, 1611 Perkimonen Avenue, Reading, Pennsylvania? A. Yes, sir.

1394

Q. Were you in business in Reading, Pennsylvania until recently? A. I was.

Q. Where was that business located? A. 554 Lancaster Avenue, Reading.

Q. What kind of a business did you conduct? A. A meat market and grocery business.

Q. What kind of work are you engaged in now? A. Part time in a department store in Reading.

Q. When you speak of Reading, do you refer to Reading, Pennsylvania? A. Yes, sir.

Q. Were you at one time a school teacher? A. Yes, sir. For the last two years I was teaching in the Reading evening high school.

1395

Q. What subject did you teach? A. English.

Q. Are you a son of the late Joseph Rosen who was killed September 13, 1936, in the Borough of Brooklyn? A. I am.

Q. Now, from the summer of 1931 to the spring of 1932, did you work for your father, Joseph Rosen? A. Yes, sir, I was employed by him and his partner; I was employed by the firm of my father.

Q. What was the name of the firm your father

old D. Rosen—For People—Direct

ember of? A. The New York and New
Clothing Transportation Company.

How many partners were there in the firm?

Who were the four? A. My father, Joseph
Morris Blustein, Nat Sobler, and Martin

What business was this firm, the New York

Jersey Transportation Company, Cloth-
ing Transportation Company, engaged in? A.

Are engaged in transporting clothing from
manufacturer to the contractor, and they
have the articles, pants, coats, and vests,
and returned back again.

Is that commonly known, as the clothing
industry? A. Yes, sir, known as cloth-
ing.

When you were employed there do you re-
member the place of business was, the office?
Ninth Avenue Place off Broadway in Manhat-

While employed there what were your du-

General charge of the office, taking care
of the office, answering telephone calls and be of
assistance around the books.

Are you familiar with bookkeeping and
accounting? A. Yes, sir, I took accountancy at

Is that one of your regular courses at

A. No, sir, I took that as a subject for
reference.

What college did you study accountancy?
Lehigh College, Reading, Pennsylvania.

Are you familiar with the books and rec-
ords of the company? A. Yes, sir, at that time

Harold D. Rosen—For People—Direct

1399

I was familiar with the books and records of the company.

Q. Was the business a paying business?

Mr. Barshay: I object. That is a conclusion.

The Court: Objection overruled.

Mr. Barshay: Exception to defendants.

A. I certainly know; I was bookkeeper there.

The Court: You have not the books here now?

1400

The Witness: No.

Q. Did the partners, including your father, have a weekly salary? A. Yes, sir, they had a weekly salary.

Mr. Barshay: I object to that as entirely incompetent with respect to the defendants.

The Court: It is competent, because it is collateral. The rule as to conclusions is relaxed as to collateral testimony. Objection is overruled.

1401

Mr. Barshay: Exception to defendants.

Q. You got to the point before objection of counsel of telling me, or rather, telling the jury and the Court that the partners had a weekly drawing account or salary. A. Yes, sir, that is correct.

Q. In addition to that, were there profits that were distributed?

1402

Harold D. Rosen—For People—Direct

Mr. Barshay: The same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

A. Yes, sir, there were profits; they usually had expense accounts which they took a certain amount during the week, etc. For example, my father had to go to Pennsylvania quite often—

1403

Mr. Barshay: I object to that as not responsive.

The Court: Objection overruled.

Q. Tell me about that. You can respond to me now.

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

The Witness: For example, he had to go to Pennsylvania to make contacts there with contractors; he certainly had to have a drawing account to do that, and it was taken out of the firm.

1404

Q. Were there trips to Pennsylvania the disbursements for which were defrayed and paid by the company in connection with securing Pennsylvania business? A. That is right.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

Harold D. Rosen—For People—Direct

1405

A. He contacted various chambers of commerce in different towns, like Carbondale, and members of the banks, in order to find out what could be done to place different industries there.

Mr. Barshay: I move to strike out that answer.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Directing your attention to the summer of 1932, did you accompany your father to a hotel in Manhattan on Broadway and 8th Street, known as the Broadway Central Hotel? A. I did.

1406

Q. Did you go there with your father by appointment?

Mr. Barshay: I object to counsel leading.

The Court: Overruled on that point.

Mr. Barshay: Exception.

A. My father had an appointment and I accompanied him.

1407

Q. Before you and your father went to the Broadway Central Hotel, did you know with whom he had the appointment?

Mr. Barshay: I object to that.

The Court: Objection overruled. Answer yes or no.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Answer this question too yes or no— Did you know when you went with your father to the

1408

Harold D. Rosen--For People--Direct

Broadway Central Hotel whom he was going to meet?

Mr. Barshay: I make the same objection.

The Court: The word "know" is really objectionable, because it states his own conclusion.

Mr. Turkus: I will reframe it.

The Court: As to the alleged persons—were you so informed?

1409

The Witness: Yes, sir.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. (The Court) And did you assume it was true?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

1410

A. Yes, sir.

By Mr. Turkus:

Q. Answer this yes or no. Did your father ask you to accompany him to that meeting?

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. No, sir.

Harold D. Rosen—For People—Direct

1411

Q. Did you go of your own initiative?

Mr. Barshay: The same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Did you go with him side by side to the hotel?

Mr. Barshay: I make the same objection.

1412

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir.

Q. Now, when you and your father got to the Broadway Central Hotel what did you see your father do?

Mr. Rosenthal: I object to this line on behalf of the defendant Capone as in no wise binding on him.

Mr. Cuff: We make the same objection as to Weiss.

1413

The Court: I don't know whether it is or not; if it is not connected up it means nothing.

Mr. Rosenthal: May I have an objection to this question and may I have a general objection to this line of questioning in so far as the defendant Capone is concerned?

The Court: As to the subject-matter, yes.

1414

Harold D. Rosen—For People—Direct

Mr. Rosenthal: And I take an exception to the Court's ruling.

Mr. Cuff: May the same rule apply to the defendant Weiss?

The Court: Yes. The Court figures if it is not connected it is not prejudicial in any way. No harm is done by taking it subject to being connected.

By Mr. Turkus:

1415

Q. What did you see your father do? A. I saw him walk into the hotel.

Q. Did you wait for your father to come out? A. Yes, sir.

Q. How long did you wait? A. About three-quarters of an hour or an hour approximately.

Q. Did your father come out? A. Yes, sir, he did.

Q. Was he alone when he came out? A. When he came out he was alone.

Q. Did anybody join him in the lobby? A. Yes, sir, they did.

1416

Q. Now, that question I asked may be ambiguous about coming out alone. Do you mean stepping out of the hotel, the outer door? I am referring to the time you saw him in the lobby. A. In the lobby there were three men with him.

By the Court:

Q. That is rather a small lobby? A. It is not very large, the Broadway Central.

Q. The small lobby was visible from where you stood? A. Yes, sir.

Harold D. Rosen—For People—Direct

1417

By Mr. Turkus:

Q. Did you see your father walk in the lobby with these men or did you see something else?

A. I saw him standing with three men.

Q. Did you watch him and the men?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. Yes, sir, I did.

1418

Q. Do you recognize one of the men? A. I do.

Mr. Barshay: I object.

The Court: Overruled.

Mr. Talley: I object to this line of testimony on the ground he says what he is describing was in 1932, and I submit and object to it on the ground that whatever happened is too remote to be competent evidence in this trial, four years before the crime charged in the indictment, 1932—four years before 1936.

1419

Mr. Barshay: And I join in that objection.

The Court: The same ruling.

Mr. Barshay: Defendants except.

Mr. Talley: Defendants except.

Q. Tell this jury who one of the men was that was in the hotel lobby with your father. A. The gentleman there named Lepke.

The Court: We don't know what that means.

1420

Harold D. Rosen—For People—Direct

The Witness: The gentleman right here, next to that fellow with the badge.

Q. Do you know his name? A. Yes, sir, Lepke.

Mr. Barshay: I move to strike it out.

The Court: Motion denied.

Mr. Barshay: Exception.

The Court: By "Lepke" indicating whom?

1421

Mr. Turkus: The defendant Buchalter, alias Lepke.

The Court: The record does not show who Lepke is.

Mr. Turkus: He pointed to him and indicated him. He called his name on the record.

Mr. Barshay: I object. There is no proof that they are one and the same person, although there will be. Let the District Attorney wait his time.

The Court: All right.

1422

By Mr. Turkus:

Q. Did the defendant Buchalter, or Lepke, as you call him, and your father and those other men stop in the hotel lobby and talk? A. Yes, sir, they did.

Q. About how far away were you from your father and the defendant Lepke and the other men? A. It seemed about 15 or 20 feet.

Q. As you looked at them, which way was your father facing? A. His back was toward me.

Q. Who was your father facing? A. He was facing the gentlemen—

Harold D. Rosen—For People—Direct

1423

Mr. Barshay: I object to that as a conclusion.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. You told us as you looked at the group your father's back was to you? A. Yes, sir.

Q. Toward whom was he facing? A. My father was facing toward the man I pointed out in this court-room now.

Q. What name did you call that man? A. The only name I knew him at that time, Lepke.

1424

Q. At that time was the name Lepke a familiar name to you? A. Yes, sir, it was.

Q. Had you heard that name before you went to the hotel with your father? A. Yes, sir, I did.

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

Q. From where you stood did your senses, that is your physical senses, tell you who was doing the talking?

1425

Mr. Barshay: I object.

The Court: Sustained as to form.

Q. Who was talking?

Mr. Barshay: I object. He says he was not in a position to hear.

Mr. Turkus: I never heard such an answer.

1426

Harold D. Rosen—For People—Direct

Mr. Barshay: He said he was 15 feet away or 20 feet away.

By the Court:

Q. Did you hear who was talking? A. Yes, sir, Lepke was talking.

Mr. Barshay: I move to strike it out.

The Court: Motion denied.

Mr. Barshay: Exception.

1427

By Mr. Turkus:

Q. While Lepke was talking, did he do anything? A. He seemed to be in an animated—

Mr. Barshay: I object.

The Court: Let him finish his answer.

Mr. Barshay: My objection is to the answer as he started it.

The Court: The answer was not finished when the interruption came.

1428

Mr. Barshay: He started to answer with the words "He seemed." It is obviously a conclusion.

By the Court:

Q. What did you observe as to the talk? A. Lepke, the man I referred to, was in an animated discussion with my father.

Mr. Barshay: I object to the characterization.

The Court: Objection overruled.

Harold D. Rosen—For People—Direct

1429

Mr. Barshay: Exception.

Mr. Turkus: I ask that your Honor rule that the witness be permitted to complete that testimony.

Mr. Barshay: That is an inference that I did not allow him to complete. He finished his answer.

The Court: Did you finish your answer?

The Witness: No, I was continuing.

The Court: Well, go ahead.

1430

The Witness: There were two men beside him. They all seemed—

Mr. Barshay: I move to strike that out. That is not responsive. It is not responsive to the question Mr. Turkus asked. He finished the answer to the question Mr. Turkus put to him.

Mr. Turkus: Will your Honor permit him to finish?

Mr. Cuff: May we have the question read?

The Court: Leave out what "seemed." State what you observed. Finish your answer.

1431

A. He was in an animated discussion.

Mr. Barshay: I move to strike that out.

The Court: Please don't interrupt. Let the witness finish his answer and then objection may be made. This delays the trial. What is your answer.

1432

Harold D. Rosen—For People—Direct

The Witness: Lepke was in an animated discussion with my father.

By the Court:

Q. How about the others? A. There were two men beside him who seemed to edge up close to Mr. Lepke.

The Court: They "seemed" you say?

1433

The Witness: I was looking at them. They did.

By Mr. Turkus:

Q. While Lepke was engaged in this talk with your father, which you said was an animated discussion, did you see Lepke himself do anything?

Mr. Barshay: Objected to.

The Court: Objection overruled.

Mr. Barshay: Exception.

1434

A. It all looked like threatening. I would rather not answer that.

Mr. Barshay: I move to strike out the witness's voluntary statement.

The Court: Motion denied.

Mr. Barshay: Exception.

Q. Answer it the way you want to answer it.

Mr. Barshay: I object. It is an improper statement.

Harold D. Rosen—For People—Direct

1435

The Court: You were asked if you saw Lepke himself do anything.

The Witness: He moved closer to my father.

By Mr. Turkus:

Q. When he moved closer to your father, how far apart were their faces when Lepke was talking? A. They were almost face to face.

Q. How close were the faces? A. He spoke right into his face. 1436

Q. When you say "he spoke right into his face," who spoke? A. Lepke spoke into my father's face.

By the Court:

Q. How many inches away would you say their faces were? A. Maybe six.

By Mr. Turkus:

Q. When facing Lepke quite as close as you told the Judge what did your father do? A. My father turned around and walked out of the hotel. 1437

Q. When he walked out of the hotel, did he join you? A. Yes, sir.

Q. Did you look at your father's face? A. I did.

Q. Describe it to the jury.

Mr. Barshay: I object.

The Court: Objection overruled.

Gold D. Rosen—For People—Direct

Mr. Barshay: Your Honor will keep in mind this is in 1932.

Mr. Cuff: I object on the ground that that his father's face appeared to be is not material; it has no materiality and no relevancy whatever to this case.

The Court: The Court is keeping everything in mind.

Mr. Cuff: May we have an exception to your Honor's ruling?

The Court: Objection is overruled.

Mr. Cuff: Defendants except.

Mr. Barshay: Defendants except.

The Witness: He was very white and pale and seemed very nervous, and was very nervous.

Mr. Barshay: I move to strike that out as a conclusion.

The Court: Motion denied.

Mr. Barshay: It is not binding on these defendants. I wish counsel would refrain from his cynical smile when I make an objection.

The Court: It is competent under the rules of evidence as understood by the court. Immediate physical reactions may be described.

Mr. Barshay: I have a right to object, Your Honor understands that.

Carkus:

When you saw your father in the condition described to the jury—and answer this question—did you talk to him? A. Yes, sir.

Harold D. Rosen—For People—Direct

1441

Q. Did he answer you--yes or no? A. No.

Q. How long after that was it before your father's business broke up?

Mr. Barshay: I object, especially to the word "broke up." That is a conclusion.

The Court: Well, "discontinued." Use the word "discontinued."

Mr. Barshay: I object to the use of that word on the ground it has no relevancy to this issue.

1442

The Court: Objection overruled.

Mr. Barshay: Exception.

A. About six months.

Q. After your father's business had ended, that is, the New York and New Jersey Company, did your father secure a position? A. Yes, sir.

Q. For whom did he go to work? A. Louis Cooper.

Q. Louis Cooper of the Garfield Express? A. That is right.

1443

Q. Approximately how long did your father work for Louis Cooper? A. About five or six months.

Q. When your father secured this position with Louis Cooper did you return to Reading, Pennsylvania? A. I did.

Q. Did you there go to school?

Mr. Barshay: I object to what he did: it has nothing to do with this case.

The Court: Objection overruled.

Mr. Barshay: Exception.

1444

Harold D. Rosen—For People—Direct

A. I went back to finish my last year at college.

Q. When the school semester was completed, did you return to New York City?

Mr. Barshay: Same objection.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. I did.

1445

Q. Did your father's position with Louis Cooper or the Garfield Express terminate? A. It did, before I finished school.

Q. During the summer of 1939 did your father have any steady employment—1933—excuse me.

Mr. Barshay: I object to the form of the question.

The Court: Objection overruled.

Mr. Cuff: Same objection.

The Court: Same ruling.

Mr. Cuff and Mr. Barshay: Exception.

1446

A. He did not.

Q. Did he, to your knowledge, make any attempt to secure work?

Mr. Barshay: I object.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. He did.

Q. Did he seek to get a connection in the clothing trucking business?

Mr. Barshay: The same objection.

Harold D. Rosen—For People—Direct

1447

The Court: How would he know?

Mr. Turkus: He was back from school, working for his father.

The Court: That would be hearsay.

Q. You were not with him when he tried to get work? A. In constant communication with him.

The Court: That is all hearsay.

Mr. Turkus: I will not pursue it.

1448

Q. Do you know this of your own knowledge: While your father was unemployed did he make visits to the garment district and the clothing district?

Mr. Barshay: I object, at the most it is hearsay, unless he went with him.

The Court: Objection sustained.

Q. Do you know of your own knowledge whether your father secured a position with a man named Larry Cooper? A. He did.

1449

Q. Do you know whether that position lasted a short time? A. It lasted a short time, yes, sir.

Q. Was it after that position ended that your father went into business in the candy store at 725 Sutter Avenue, Brooklyn? A. Yes, sir.

Q. I want to direct your attention to the summer of 1936. Were you living then in Reading, Pennsylvania? A. I was.

Q. Did your father, Joseph Rosen, go down to Reading, Pennsylvania? A. He did.

Q. How long did your father stay in Reading, Pennsylvania? A. Just a few days.

1450

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Q. Can you remember the date of his arrival now? A. It was a Friday night.

Q. When your father arrived in Reading, Pennsylvania—and this question just answer yes or no—did he talk to you? A. Yes, sir, he did.

Q. Answer this only yes or no: Did he discuss the reason for his visit with you?

Mr. Barshay: I object.

1451

Mr. Cuff: That is calling for hearsay testimony.

The Court: Answer yes or no. Objection overruled.

Mr. Cuff and Mr. Barshay: Exception to defendants.

A. Yes, he did.

The Court: What year was that?

Mr. Turkus: In the summer of 1936.

Q. Approximately how many days did your father spend in Reading?

1452

Mr. Cuff: Objected to as already answered. He said a few days.

Mr. Barshay: I make the same objection.

The Court: Objection overruled.

Mr. Cuff and Mr. Barshay: Defendants except.

A. Three days.

Q. Did your father then depart from Reading? A. Yes, sir. He did.

Q. On Sunday, September 13, 1936, did you

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receive a telephone call in Reading, Pennsylvania? A. Yes, sir, I did.

Q. Who telephoned you? A. My sister Sylvia.

Q. After that telephone call did you go to Brooklyn, New York? A. I did.

Q. When did you arrive in Brooklyn? A. I arrived at about one o'clock.

Q. Would you say one o'clock in the afternoon? A. Yes, sir, I believe—it was the nine o'clock train and it got to New York about 12:30; it was about one o'clock approximately.

1454

Q. Did you go to your father's home? A. Yes, sir, I did.

Q. Where was it then located? A. 720—

Q. No, the home? A. 345 Wyona Street.

Q. Did you there see various people? A. Yes, sir, I did.

Q. Members of your family? A. Yes, sir.

Q. Detectives and police officials? A. Yes, sir.

Q. From your home did you go to the Kings County Morgue? A. Yes, sir, they took me there.

Q. Did you there view the body of your father, Joseph Rosen? A. Yes, sir, I did.

1455

Q. Did you identify his body to the Medical Examiner? A. I did.

Q. Did you attend the funeral? A. Yes, I did.

Q. On Monday, July 7, 1941, did you receive a visit at Reading, Pennsylvania, from any people now in this court? A. Yes, sir, I did.

Q. Who were the people? A. The attorneys over there—Mr. Barshay and Mr. Cuff.

The Court: When was that?

Mr. Turkus: July 7, 1941.

1456

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The witness is offered for cross-examination.

The Court: (addressing jury) We will now take a recess until 1:30, gentlemen. Please do not discuss the case nor let anyone talk to you about it. Keep your minds open.

The defendants are remanded.

1457

(A recess was taken at this point for luncheon, at the request of Mr. Barshay, the attorney for the defendant Buchalter.)

AFTERNOON SESSION

TRIAL RESUMED

HAROLD E. ROSEN (resumes the stand).

1458

Mr. Barshay: Now I ask your Honor to instruct the jury at this time, in the language of Section 39 of the Canons of Professional Ethics of the American Bar Association, the New York City Bar Association of the City of New York, as follows: A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action, without the consent of opposing counsel or party. In doing so, however, he should scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from its truth or in any

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degree to affect his free and untrammelled conduct when appearing at the trial or on the witness-stand.

The Court: That is correct.

Mr. Barshay: I ask Mr. Turkus to concede that by the last question he put to the witness he meant no innuendo of any kind, nature or description with respect to Mr. Barshay or Mr. Cuff.

The Court: I think you are too sensitive.

1460

Mr. Barshay: All right, sir. I ask Mr. Turkus to be gentleman enough to concede that.

The Court: Maybe the manner of putting that request is not quite proper.

Mr. Barshay: Maybe the manner of putting the last question to the witness and dropping him in the manner in which he did is not proper too. I have a right to be sensitive of our reputations when there are people in the court room who do not know the ethics of the profession and have a right to infer there was something wrong. I do not want that impression to go unchallenged. That is all I care about.

1461

The Court: The Court gives him the instruction that you request. Let the incident rest there.

Mr. Barshay: All right, Mr. Turkus.

Cross-examination by Mr. Barshay:

Q. Mr. Rosen, when for the first time were you questioned by any member of any District At-

1462

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torney's office after your father's death? A. Please repeat that, Mr. Barshay.

(Pending question read by the reporter.)

A. I could not remember exactly but I know I was taken up to District Attorney Geoghan's office and questioned there.

Q. And can you tell me how long after your father's death? A. I don't know exactly what you mean, Mr. Barshay.

1463

Q. How long after your father died or was killed?

The Court: Days, weeks or months?

Q. Were you questioned in the District Attorney's office? A. After that time, you mean?

Q. Yes.

The Court: Was it soon?

A. I don't remember whether he called me or not. That is why—

1464

Q. You now recall that before your father's death you were not questioned by anyone, is that correct? A. Yes, sir.

By the Court:

Q. Did you identify the body in the morgue? A. Yes, I did, your Honor.

Q. To whom, Dr. Marten? A. I don't know his name.

Q. The medical examiner? A. Yes, sir.

Q. And about that time did you go to the District Attorney's office? A. I know they took

me there. I was so wrought up I don't remember what day but it was right after that.

Q. It was right after? A. Yes, sir.

By Mr. Barshay:

Q. Would you say the same day or the next day or a week later? A. I do not know. I cannot remember.

Q. I am trying to probe your recollection, that is all; nothing personal here at all. A. I understand that, Mr. Barshay.

1466

Q. Was it in a month? A. Naturally in a case like this they would take me up there shortly after the death.

Q. Do you recall the assistant to whom you made the statement? A. Assistant District Attorney McCarthy.

Q. And was there a stenographer present? A. Yes.

Q. You were asked questions and you made answers? A. That is right.

Mr. Barshay: I call upon the District Attorney to produce that statement. Well, I would like to have an answer if he has it or he has not got it. Is he producing it or isn't he? May I ask the Court to address the District Attorney?

1467

The Court: No.

Mr. Barshay: Then I press the question. I call upon the District Attorney to produce such statement for the purpose of marking it for identification.

The Court: The District Attorney is not required to answer you. If there is

1468

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no answer it is a negative response by implication.

Q. Did you testify before the Grand Jury? A. Yes, I did.

Q. Do you recall when? A. It was within that time. I don't remember exactly when.

1469

Mr. Barshay: I call upon the District Attorney to produce this gentleman's testimony before the Grand Jury as this man says he testified there, for the purpose of marking it for identification.

The Court: You don't have to have the Grand Jury minutes marked. The Court takes at all times judicial notice of them.

Mr. Barshay: Then I call upon the District Attorney to produce that statement and the Grand Jury minutes for the purpose of seeing whether or not therein contained are statements which are contradictory to the testimony that this witness now gives.

1470

Mr. Turkus: There are rules of law. They have not been complied with.

The Court: I understand there is a declination.

Mr. Turkus: There is. There are rules of law governing when I can release Grand Jury minutes. I must comply with the law.

Mr. Barshay: All right, I will prepare a subpoena right away.

Q. Did you in the Grand Jury give testimony with respect to this meeting at the Broadway

Central Hotel? Please either look in the direction of the jury or the judge or anyone else, but please— A. Repeat that question. I do not know what you are driving at, Mr. Barshay.

Q. You are an English teacher? A. Certainly.

Q. Do I speak plain simple language? A. Yes, but please repeat the question.

Q. Don't you hear me, sir? A. Sometimes I do.

Q. I will try to keep my voice up.

(Pending question read by the reporter.)

A. I don't remember.

Q. Did you to Mr. McCarthy give testimony with respect to this meeting at this hotel? A. I repeat I don't remember.

Q. That is your best answer, is that so, sir? A. That is the answer.

Q. Can you give me the date when you went to this hotel? A. How can I give you a date?

Q. Mr. Rosen, I am not here to argue with you. A. I cannot.

Q. If you cannot, please say so. A. No.

Q. Can you give me the month? A. No.

Q. Can you give me the week?

Mr. Turkas: It is objected to as already answered. He said he could not give him the month so obviously he could not give him the week.

The Court: Sustained. I think the answer is clear enough.

Mr. Barshay: Respectfully except.

1474

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Q. Can you give me the season of the year?

A. Yes.

Q. Will you give it, please?

The Court: Was it in the fall?

The Witness: No.

The Court: Winter?

The Witness: I believe it was in the spring of the year.

1475

Q. In the spring, you say, of 1932? A. Mr. Barshay, I can't remember all those things, the dates, the months, exactly what happened that time.

The Court: Counsel is asking you about 1932, four years before your father was killed.

The Witness: Yes, sir.

The Court: Did you go before the Grand Jury at that time?

The Witness: No, sir.

1476

Mr. Barshay: May I proceed, your Honor?

The Court: Yes.

Q. Do you now claim that this meeting at the Broadway Central Hotel took place in the spring of 1932?

Mr. Turkus: Object to the form, what the witness now claims, carrying with it an intimation and innuendo and implication.

The Court: Yes, it does. Sustained.

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1477

Q. Do you now say on your oath that this meeting which you say you went to with your father was in the spring of 1932?

Mr. Turkus: Same objection, the word "now."

The Court: The words "now say."

Mr. Barshay: I eliminate those two words "now say."

Q. Is it your testimony that you went to the Broadway Central Hotel in the spring of 1932?

1478

The Court: Do you recall?

A. I recall that it was the middle, probably, of the year 1931, because that is the year I stayed home from college.

Q. Did you say now 1931? A. Between 1931 and 1932 I stayed home from college. I did not go to college that year.

The Court: That is in the fall and winter?

1479

The Witness: That is right.

The Court: Of 1931-'32?

The Witness: That is right.

The Court: Is it a sensible inference that if it was in the spring, that it was in the spring of 1932?

The Witness: It was approximately that time.

Q. Is that your best answer? A. That is my best answer.

Q. Did you say at the morning session that

1480

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it was in the summer of 1932 that you went to that hotel? A. I don't remember. Did I say it? I am asking you.

Q. Under the rules of evidence you have no liberty to ask me questions because the law does not allow it. Do you mind, sir, if I ask you questions? A. Yes, sir.

Q. Did you say this morning that the visit you made to that hotel with your father was in the summer of 1932? A. I remember that it was six months after—

1481

Q. Excuse me, sir, Mr. Rosen—

The Court: Let him answer.

Mr. Barshay: I object to it. It is not responsive.

The Court: Find out. Let him answer. You remember what?

The Witness: It was probably six months after 1931 began because at that time the partnership started again—

Mr. Barshay: I move to strike out this man's answer.

1482

The Witness: It was approximately the spring or summer of 1932. This is my best answer, Mr. Barshay.

Q. Mr. Rosen, I am sure you want to respect the rights of other people, too. A. I certainly do, Mr. Barshay.

Mr. Barshay: Your Honor, I ask for a yes or no answer to the question I put to this gentleman.

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1483

The Court: He has answered the question excellently.

Mr. Barshay: May I put it again?

Mr. Cuff: I move to strike it out as not responsive.

The Court: Denied.

Mr. Barshay: Exception.

Mr. Cuff: The question asked about this morning.

Q. I ask you again, this morning did you say on this witness stand that you visited with your father the Broadway Central Hotel in the summer of 1932; yes or no?

1484

Mr. Turkus: I object to it. The answer has been completed.

The Court: Sustained.

Mr. Barshay: Respectfully except, sir.

Q. Your father was once a prizefighter, wasn't he? A. No, sir.

Q. You say that with positiveness, sir? A. Certainly, sir.

1485

Q. I don't mean that in any derogatory sense.

Mr. Turkus: I don't care how he means it. The answer is no. I object to it.

The Court: Sustained.

Mr. Barshay: Respectfully except.

Q. Did you ever hear your father referred to in the professional prizefight business as Kid Rose? A. Certainly not.

Q. All right, you do not have to feel offended. A. I think it is ridiculous to bring that up.

1486

Harold D. Rosen—For People—Cross

Q. Are you finished? A. I am sorry.

Q. Your father was a strong man in 1932?

A. Physically fit.

Q. He was short and stocky, wasn't he? Is that right? A. Yes, sir.

Q. How did you go with your father from Reading?

Mr. Turkus: Objected to. There is no such testimony.

1487

Q. All right, how did you go with your father from wherever you went? A. Wherever I went, where to where?

Q. To the Broadway Central Hotel. A. From where?

Q. From where did you go? A. From the office, Washington Place.

Q. That is in New York? A. Manhattan.

Q. All right, sir. How did you go there? A. We walked there. It is right around the corner.

Q. Had you ever been to the Broadway Central Hotel before? A. I never was inside.

1488

Q. You never were inside before? A. I never was inside.

Q. You never were inside? A. Inside the hotel.

Q. In the hotel in your entire life, was that, you were not inside the hotel? Please: on the day in question? A. I was not inside the hotel.

Q. When you say inside the hotel you mean—
A. Walking through the doors.

Q. You know the hotel had an entrance, did it not? A. Yes, sir.

Q. Did you cross that entrance? A. No, sir.

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1489

Q. So that we now have it that you never step foot within the hotel?

Mr. Turkus: I object to "we now have it". It has been answered that way by the witness consistently in his testimony.

The Court: Sustained as to form.

Q. You did not enter the hotel physically, did you? A. No, sir.

Mr. Turkus: Objected to as answered twice.

1490

The Court: That is what he said.

Mr. Barshay: He said no.

Q. How were you dressed? A. I don't remember.

Q. How was your father dressed? A. With pants and shirt, probably a tie.

Q. Do you know the color of the pants? A. Remember the pants you wore ten years ago?

Mr. Barshay: I move to strike out the answer as not responsive.

1491

The Court: Denied.

Mr. Barshay: Exception, sir.

Q. Remember if he had a hat on? A. I don't remember.

Q. A coat? A. I don't remember.

Q. The color of his shoes? A. I don't remember.

Q. Do you know what time you started out? A. No, I don't.

1492

Harold D. Rosen—For People—Cross

Q. Do you know what time you got there? A. No, I don't.

Q. Do you know what time your father came down? A. Came down from where?

Q. From the Broadway Central Hotel? A. No, I don't.

Q. Do you know what time you left with your father? A. No, I don't.

Q. Do you know what time you arrived at your place back with your father? A. No.

1493

Q. Do you recall speaking to any other person that day? Do you? A. I don't remember that, Mr. Barshay.

Q. Do you recall doing anything that night? A. I don't remember that, Mr. Barshay.

Q. Do you recall where you had your lunch or dinner that night? A. Usually have dinner at home.

Q. Do you recall that night? A. I usually eat dinner at home.

1494

The Court: If these are details you do not remember, all you have to say is you don't remember. Did any of the details of your daily life register except the incident you have testified to?

The Witness: No, sir, not the usual routine.

The Court: Did you have any occasion to remember the daily routine?

The Witness: No.

Mr. Barshay: I object to both of the Court's questions.

Mr. Turkus: I could not hear either the question or the answer.

The Court: Overruled.

Mr. Barshay: Exception, and I move to strike the answers out, sir.

The Court: Denied.

Mr. Barshay: Exception.

Q. Incidentally, Mr. Rosen, you went to Albright College on a football scholarship, did you not? A. If you made the varsity ball team you received something.

Q. You were standing in the street while your father went in? A. That is right.

1496

Q. Did he tell you what room he was going to? A. No, sir.

Q. Did he tell you he had to apply at the desk to determine what room he was going to? A. No, sir.

Q. Did you know the name of any room— A. No, sir.

Q. I want to finish the question. A. Pardon me.

Q. That was assigned to any particular party where your father went? A. Repeat that question please, Mr. Barshay.

1497

(Question read by reporter.)

A. He told me where he was going.

Q. Pardon? A. He told me who he was to meet.

The Court: Did he tell you the number of the room?

Q. Did he tell you the name or the person in whose name the room was registered? A. No, sir.

1498

Harold D. Rosen—For People—Cross

Q. Do you know in whose name the room was registered? A. No, sir.

Q. Do you know the floor? A. No, sir.

Q. You waited outside for three-quarters of an hour, did you not? A. Approximately.

Q. Did you meet any one? A. No, sir.

Q. Did you speak to any one? A. No, sir.

Q. Three-quarters of an hour passed and you say your father comes down is that correct? A. That is right.

1499

Q. Where were you when he came out of the building? A. I had been looking in the hotel. I was watching, looking inside.

The Court: Does the lobby floor open directly from the street?

The Witness: Well, they have—

The Court: Just yes or no.

Mr. Barshay: I object to the form of the question. Your Honor, we are referring to 1932.

The Court: Broadway Central Hotel?

1500

Mr. Barshay: That is correct, but there is no proof here that the physical structure was the same then as it is now. I suggest you ask the question then.

The Court: I have been familiar with the hotel for fifty years.

Mr. Barshay: It has been re-constructed, the entire lobby.

The Court: I have a picture of that lobby in my chambers, if you would like to see it.

Mr. Barshay: I am only asking your Honor to ask him as of that date. I don't argue with the court about it.

Harold D. Rosen—For People—Cross

1501

The Court: That is an old hotel in the vicinity of Wanamaker's, Mr. Witness?

The Witness: Yes, Wanamaker's is on 8th Street, I believe.

The Court: And is that in the Washington Square district?

The Witness: Yes. Of course, Washington Square is down further. That is on Broadway.

The Court: Slightly further?

The Witness: Yes.

1502

The Court: Does Washington Place run over in that direction?

The Witness: Washington Place runs to meet Broadway.

The Court: Yes. It is a short place, isn't it?

The Witness: That is right.

The Court: Then you have University Place?

The Witness: And Waverly Place.

Q. Do you know now whether or not at that time the lobby of the hotel ended directly on the sidewalk or whether or not it had an inner lobby and an inner hall? A. I don't remember. There is glass on each side. I looked through that.

1503

Q. Was it glass through which you could look? A. Yes, sir.

Q. When did you start to look through the lobby glass? A. I had been looking all the time.

Q. Did you stand there and take a position? A. I looked around, naturally, and then after a half hour I started looking inside.

1504

Harold D. Rosen—For People—Cross

Q. Did you make any effort to go inside? A. No, sir.

Q. And as your father walked out, you were at the glass door? A. Not the glass door, the glass window.

Q. That was in the outer door? A. Yes, sir.

Q. Now, was there any storm door at that time in the Broadway Central Hotel? A. I don't know. I looked through the window.

1505 Q. Could you see the lobby as you were looking in there? A. Yes, sir.

Q. Did you see where your father came from? A. No, sir.

Q. Did you see whether he came out of an elevator? A. No, sir.

Q. Did you see whether he came down the stairs? A. No, sir.

Q. Did you see whether he came from the left? A. No, sir.

Q. Or from the right? A. No, sir.

Q. Or from the back? A. No, sir.

1506 Q. When you saw your father, what was he doing? A. He was talking. I happened to glance in the window and he was talking.

Q. He was talking? Was his face to you? A. No, sir.

Q. Was he standing still? A. Yes.

Q. Was his back to you? A. That is right.

Q. And you could see him talk, is that correct? A. That is right.

Q. How many men was he talking to? A. Talking to one man.

Q. Where were the others? A. Right beside that one man, one on each side.

Q. Could you see the faces of the others? A. I could see them but I didn't know them.

Q. Could you see them, I asked? A. Yes, I could see them.

Q. How far from the door were those three men? A. I don't know the exact distance. I didn't think of distance at that time.

Q. Approximately? A. Maybe fifteen feet.

Q. From where you were? A. Where I was.

Q. Did your father ever turn around so that you could see his face? A. No, sir.

Q. All the time you observed your father his back was towards you? A. It was only a very short time. 1508

Q. This conversation took a short time? A. That is right.

Q. But his face was never towards you? A. That is right.

Q. In that short time? A. That is right.

Q. Could you describe the other men who were there? A. One was a very tall fellow, husky build. The other fellow was ordinary, medium sized man.

Q. What was the tall fellow's height, if you can tell us? A. Six feet, probably.

Q. How about his weight? A. I don't know— heavy. 1509

Q. Do you know how he was dressed? A. No, sir.

Q. Do you know the color of his hair? A. No, sir.

Q. Do you know whether he had a hat? A. No, sir.

Q. The kind of a suit he wore? A. Don't remember.

Q. Did he wear a top coat? A. I don't remember.

1510

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Q. About the shorter man, about how tall would you say he was? A. I don't know exactly. I was a little agitated then.

Q. You were agitated before you knew what happened, were you? A. I certainly was.

Q. What was the color of his hair? A. I don't remember.

Q. How was he dressed? A. I don't remember.

1511

Q. Did you ever see any of those men before? A. I don't remember seeing them.

Q. Did you ever see them after? A. No, I don't remember seeing them afterwards.

Q. Was your father directly in front of you? A. I cannot remember that. He was in full view.

Q. Was his back in full view of you? A. Yes, I could see his whole back.

Q. Did he obstruct your vision? A. Not much.

Q. Could you see who was standing directly in front of him? A. Yes, I could.

Q. Did you know that man before? A. I had seen him just once or twice around that neighborhood, in the car.

1512

Q. What? A. I had seen him once or twice in that vicinity, in the car.

Q. You had seen him once or twice in that vicinity? A. That is around that section, clothing section.

Q. Once or twice before? A. That is right.

Q. When before this time at the Broadway Central Hotel was the last time that you had seen that other man? A. Around that time, maybe—

Mr. Turkus: Just a minute. I am going to object because I want the record

clear who the other man is that we speak of. There are three men who have been spoken of, two unidentified and one identified.

Mr. Barshay: That is the one we speak of.

Mr. Turkus: If we speak of the identified man, let the record show we do.

Mr. Barshay: I object to the word "identified". That is his contention. That is for the jury to say.

Mr. Turkus: Let the record note then that he is talking about the defendant Lepke.

Q. You were speaking about the defendant Buchalter, were you not? A. That is right.

Q. You tell me when before that time did you see him before? A. I had seen him going to the Rifter Clothing Company. Somebody pointed him out to me.

Q. Who is that someone? A. Some individual around the office.

Q. What is his name? A. I don't remember.

Q. Where is that company? A. Rifter Clothing Company.

Q. Where was it then? A. Just a block down but in that vicinity.

Q. A block down where? A. I believe it was Washington Place.

Q. A block down from where? A. A block further than where the office was.

Q. Which office? A. New York and New Jersey Transportation Company.

Q. What is the name of the individual who pointed him out to you?

Mr. Turkus: Objected to.

1516

Harold D. Rosen—For People—Cross

Q. Who is the person? A. There were always tailors and contractors around there. I could not tell which one.

Q. Do you recall his name? A. No, sir.

Q. Did you ever see him again? A. Probably. I don't remember who told me.

Q. How long before this alleged meeting at the Broadway Central did that take place? A. I don't know; maybe a month, maybe two or three weeks.

1517

Q. Do you know the day of the week? A. No, sir.

Q. How long was that person whom you described talking to you before this man came along? A. I don't remember that.

Q. What time of day was it? A. I don't remember that.

Q. Was it a rainy day? A. No, sir.

Q. Was it a sunny day? A. It was clear.

Q. Was it in the morning? A. I don't remember.

Q. Was it in the afternoon? A. I don't remember.

1518

Q. Was it at night? A. No, sir.

Q. Is that the second time you had seen that man? A. I believe that was the first time.

Q. That was the very first time? A. Yes, sir.

Q. What was he doing? A. Walked out of a car.

Q. What kind of a car was it? A. It was a big car. I don't know the names of the cars.

Q. Was it chauffeur driven or not? A. Yes, it was chauffeur driven. The man did not have a chauffeur's uniform, but somebody else was driving it.

Q. Do you know who was driving it? A. No, sir.

Q. Do you know the color of the car? A. Probably black.

The Court: Don't guess.

Q. Probably? A. I don't know, sir.

Q. Do you know whether it was a sedan? A. Yes, sir.

Q. Four-door or two-door? A. I don't remember that.

Q. Do you know the make of the car? A. I don't remember.

Q. Do you know how many people were in the car? A. I don't remember that.

Q. Do you know which side of the street the car parked? A. I don't recall that.

Q. Do you know whether anyone was sitting alongside the driver? A. I don't remember.

Q. Do you know whether the car had white-wall tires or not? A. I don't remember.

Q. Do you know the license plate? A. No, sir.

Q. How long did you have that man in view?

Mr. Turkus: Object to the form of the question. That man has a name. He has been identified. Let the record show whom he speaks of.

Mr. Barshay: You mean he claims he identified him.

Mr. Turkus: I don't care whether you claim or not.

Mr. Barshay: Let us agree and we won't argue.

Mr. Turkus: We won't agree if it is a

1522

Harold D. Rosen—For Pec, la—Cross

claim, as you say. I say he has been identified. I object to the form of the question.

The Court: Overruled.

Mr. Barshay: You may answer, sir.

The Court: Have you any recollection as to how long you were looking in?

Mr. Turkus: No, that is not the question.

1523

Q. How long did you have him in view? A. I don't remember.

Q. Do you recall how far you were from that man? A. Not very far.

Q. Do you recall whether you saw his full face or side view? A. I saw his full face.

Q. Did he just pass you by? A. I don't remember that.

Q. That is the first time you saw him? A. I think it was the first.

Q. And someone said something to you; is that correct? A. Someone told me who the individual was.

1524

Q. But you don't know who that someone is? A. I don't remember.

Q. When is the next time you saw that person? A. Saw him once again in the car. I don't remember how long afterwards. It was a short time.

Q. How long is a short time?

Mr. Turkus: Objected to. That is how long is long or short.

Mr. Barshay: He understands the question, Mr. Turkus.

Mr. Turkus: I do not care whether he does or not. It is objectionable.

The Court: What is the question?

Mr. Turkus: "How long is short?" is the question. I object to it.

Mr. Barshay: I did not ask him that. I asked him a perfectly proper question.

The Court: He said, "How long or short?"

Mr. Barshay: I will put the question as I said it before.

Q. How long do you claim a short time to be? You said you saw him a short time thereafter. How long is that?

Mr. Turkus: I object to the form of the question.

The Court: Did you give any approximation in minutes?

Mr. Barshay: He does not mean minutes, sir; he did not say minutes.

Q. How many days or weeks or months, can you tell me that? A. It probably was within the month.

Q. Where did you see him? A. I saw him go up to the Rifter Clothing Company.

Q. The— A. Rifter Clothing Company.

Q. Do you know the date? A. No, sir.

Q. Do you know the week? A. No, sir.

Q. Do you know the time of the day? A. No, sir.

Q. Do you know how he was dressed? A. No, sir.

1528

Harold D. Rosen—For People—Cross

Q. Do you know how he came there? A. By car.

Q. Was it the same car? A. That is right, sir.

Q. Same chauffeur? A. That is right, sir.

Q. Same time? A. I don't know, sir.

Q. Someone else pointed him out to you? A. No, sir.

Q. How long did you see him? A. He walked right by.

1529

Q. What were you doing there? A. My father had an appointment with him. He told me he was going to meet him at Rifter's Clothing Company.

Q. Mr. Rosen— A. Yes, sir.

Q. You understand a simple question, don't you? A. You asked me; I answered you.

Q. All right, I asked you what were you doing there. I did not ask you what your father told you, did I? A. I was looking where he went.

Q. All right, you answer the question, that's all. That took only a second? A. I do not know how long.

1530

Q. Two seconds, three seconds? A. I do not know.

Q. The third time you saw him was at this hotel? A. That is right, sir.

Q. Is there anyone else in this court-room whom you saw him with at the Broadway Central Hotel? A. No, sir.

Q. Sure about it? A. I have not looked over anybody.

Q. I want you to look over everybody and see. A. I don't remember anyone else.

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1531

Q. You did not take much time to look, did you? A. No, I was looking at my father.

Q. I am talking about now, sir.

Mr. Turkus: I object to the form of the question. I take it there are over a hundred people in the court-room. I do not know.

Mr. Barshay: That is exactly my point. He answered very quickly.

Mr. Turkus: I object to the form of the question as argumentative.

1532

The Court: Do you have any recollection of the looks of the other two—

The Witness: No, sir.

The Court: —sufficient to ~~enable~~ you to make an identification should you see one of them now?

The Witness: I would not remember, sir.

The Court: The only one you noticed was Lepke?

The Witness: Yes, sir.

1533

Q. Since then did you see that man again? A. No, sir.

Q. Until you walked into the court-room? A. That is right, sir.

Q. You knew where he was going to sit? A. No, sir.

Q. You don't know where a defendant sits in the court-room? A. The first time I have been in a court-room, that is for anything.

Q. Did you see the defendant as he was taken

1534

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in from the stairs outside of the court-room into this court-room— A. No, sir.

Q. —at any time at all? A. No, sir.

Q. After you spoke to Mr. McCarthy some-time after your father was shot, did you speak to anyone else in official capacity? A. I don't remember whether I spoke to Mr. McCarthy first or Mr. Geoghan first. I don't remember that.

Q. After that some years passed. Did you speak to any other person in official capacity?

1535

A. Yes, sir.

Q. When? A. I spoke to Mr. Joseph.

Q. When did you speak to Mr. Joseph for the first time? A. He was out to see me.

Q. He was out to see you? A. Yes.

Q. In Reading, Pennsylvania? A. That is right.

Q. When was that, sir? A. I don't remember the exact date. It was before the trial opened.

Q. How long before the trial opened? A. I don't remember; maybe a week or two.

Q. Was it after Mr. Cuff and I visited you? A. No, sir, it was before.

1536

Q. It was before that? A. Yes, sir.

Q. How long before? A. Maybe a week. I can't remember the exact date. They would know it; I would not.

Q. Was a stenographer present? A. No, sir.

Q. Did you give him a statement? A. Yes, sir.

Q. Did he take it in longhand or was it just a conversation? A. No, he took it down.

Q. Did you sign it? A. Yes, sir.

Q. Did you sign it yourself? A. Yes, sir.

Q. When did you next speak to any person

from Judge O'Dwyer's office or the Police Department? A. I was down just a few weeks ago.

Q. Whom did you speak to, sir? A. Mr. Turkus.

Q. Anyone else? A. Beg pardon, sir?

Q. Anyone else? A. Mr. Klein was there.

Q. Now have you given us all the people you have spoken to? A. In reference to what?

Q. In reference to this case. A. Yes, sir, Mr. Joseph, Mr. Klein and Mr. Turkus.

Q. First Mr. Joseph asked you some questions—right? A. In Reading.

1538

Q. Then you came to New York and you were questioned again? A. That is right, sir.

Q. Once or more than once? A. Twice.

Q. And do you know how long elapsed between the first time and the second time? A. I don't remember.

Q. You did not testify in the Grand Jury here, did you? A. Again? No, sir.

Q. You do recall that Mr. Cuff and I visited you, to be exact, on July 8, 1941; is that correct?

Mr. Turkus: Objected to. That is not the testimony.

1539

The Court: I thought he said the 3rd.

Mr. Turkus: The date that I submitted to the witness for his consideration was July 7, 1941.

Mr. Barshay: You are right, Mr. Turkus.

Q. July 7th—

Mr. Turkus: And I suggested the date.

Mr. Barshay: I have July 8th.

1540

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Mr. Turkus: You ought to know.

Mr. Barshay: Let me finish. —when I dictated our memorandum.

The Court: You have a record of it?

Mr. Barshay: Yes, I have a record when I dictated our memorandum, July 8th.

The Court: That is undoubtedly correct.

1541

Mr. Barshay: No, it was the day before, sir. We came back very late.

The Court: Whatever date you have on office records would be correct, naturally.

Q. How long before July 7, 1941, did Mr. Joseph visit you? A. I don't remember the date, Mr. Barshay.

Mr. Barshay: May we have the date from the District Attorney, if possible?

Mr. Turkus. After all, it is the recollection of a witness that should be in evidence.

1542

The Court: Correct.

Mr. Turkus: I oppose this indiscriminate calling upon the District Attorney.

Mr. Barshay: It is most discriminate. And if you cannot say so, just tell me, and I will pursue something else.

The Court: Neither side has a right to call upon the other side to give evidence without calling counsel on the stand.

Mr. Barshay: I know that.

The Court: And having the oath administered.

Mr. Turkus: I am advised by Mr. Joseph that the date that he went to Reading, Pennsylvania, to see this witness was April 28, 1941.

Q. Now, you recall that it is more than a week? A. I do not remember, Mr. Barshay.

Q. I just want to test your memory. That is exactly the point. In this hotel you did not hear a word of conversation? A. No, sir.

Q. You said you worked for your father in 1931? A. That is right, sir.

1544

Q. And that was the New York and New Jersey Corporation? A. Clothing Transportation Company

Q. Was it a corporation? A. Yes, sir.

Q. Do you know how it happened to be formed? A. What do you mean, how it happened to be formed?

Q. Well, was it an agreement between a few gentlemen to form a corporation? A. There was a corporation, papers drawn up.

Q. That is correct, isn't it? A. Yes, sir.

Q. You went to some lawyer? A. That is right, sir.

1545

Q. That lawyer was in Elizabeth, New Jersey? A. That is right, sir.

Q. Did you go? A. Beg pardon?

Q. Did you go? A. I think I did.

Q. Were the partners Martin Kelly, Mr. Bluestein, and Mr. Sobler? A. That is right.

Q. Do you know your father's agreed contribution to that company? A. Do I know what?

Q. Do you know what your father agreed to contribute to the formation of this corporation?

A. No, sir.

Q. Or company? A. No, sir.

1546

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Q. You don't know? At that time did your father have any assets? A. He was in business with Kelly.

Q. He was in business with Martin Kelly and himself? A. That is right.

Q. Kelly & Rosen, wasn't it? A. That is right, sir.

Q. That was a non-union shop, wasn't it? A. What do you mean, non-union shop? They did not have a shop.

1547

Q. Well, perhaps I should say a non-union concern. It was a trucking outfit, wasn't it?

Mr. Turkus: I object, unless it is brought within the personal knowledge of the witness, if he knows.

Q. I am asking if you know it.

Mr. Turkus: You did not ask it. You suggested it was non-union.

Mr. Barshay: I will ask it now.

1548

Q. Was it a non-union concern, Kelly & Rosen? A. I do not know what you mean by "non-union" in reference to Kelly & Rosen.

Q. Kelly & Rosen were in business how long?

A. For a short time.

Q. How long, a month, two months, three months?

Mr. Turkus: I object to it unless it is shown to be within the knowledge of the witness.

Mr. Barshay: He is the bookkeeper,

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1549

and he knows everything about his father's business.

Mr. Turkus: You are not talking about that concern.

Mr. Barshay: I will bring it up to the new concern.

Mr. Turkus: Please, I have an objection before the Court.

The Court: The Court seems to have difficulty in ruling on objections.

Mr. Turkus: Well, you have not had before.

1550

The Court: There is so much talking on every objection. The witness, I think, knows the meaning of the question. Go ahead.

Q. You knew something about your father's business, did you not? A. That is right.

Q. All right. Do you know how long Kelly & Rosen were together as partners? A. I don't remember.

Q. Do you know where their place of business was? A. They worked out of Elizabeth, New Jersey.

1551

Q. Do you know that their business consisted of carting merchandise for non-union shops in the clothing district? Do you know that or don't you? A. I don't remember; I don't know about that.

Q. Do you know that Kelly at that time had four trucks which he contributed to the partnership which he formed with himself and your father? Did you know that? A. I did not know that.

1552

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Q. Did you know that all your father contributed was his experience to Mr. Kelly? Did you know that? A. I do not know anything about the Kelly-Rosen thing, because I was not there.

Q. Do you know that the New York and New Jersey concern was already in existence for a considerable time and the owners were Mr. Bluestein and Mr. Sobler? A. I knew that.

1553

Q. Did you know that both of these concerns, your father's and Sobler's, were competitors? Did you know that? A. No, sir.

Q. Did you know that they were covering the same routes or territories in New Jersey, or Pennsylvania, or wherever they were? A. No, sir.

Q. Did you know Max Rubin at that time? A. No, sir.

Q. Did you know that it was agreed that your father and Mr. Kelly should enter the firm of the New York and New Jersey with Bluestein and Sobler as equal partners? A. I don't know anything about that negotiation.

1554

Q. You said you went to the lawyer's office, didn't you? A. I said I do not know. I do not know if I did or not.

Q. Did you know that Mr. Kelly agreed to contribute to this new firm all the trucks that he had and all the good will that he had?

Mr. Turkus: Objected to. The witness has indicated he does not know anything about the transaction. This could go on and on ad infinitum.

Mr. Barshay: I am sure it will not.

The Court: Mr. Barshay and you are entitled to equal liberality.

Q. Did you know that your father agreed to contribute the sum of \$10,000 in cash, \$10,000, to this new concern? A. I don't know anything about the negotiations.

Q. Did you know that your father was to contribute five thousand of it in cash— A. I don't know anything about it.

Q. Please, just a second. —and the other five thousand was to come out of the operations of the new company? Did you know that? A. I don't know anything about it.

1556

Q. Did you learn it after you started to work for the company as bookkeeper? A. All I did as bookkeeper was take care of the books when they started.

Q. Did you post who were the record stockholders? A. No, sir.

Q. Did you know how much each one had? A. I understood it was an equal share.

Q. Do you know with what balance they started in the bank? A. No, sir.

1557

Q. Did you know how the money was to be paid by your father—did you? A. I do not know anything about that.

Q. Did you know that your father had no money at all at the time he went into this partnership? A. I don't know about that.

Q. Did you keep those books personally? A. All I kept records of was the work going out and the bills that were supposed to be collected from the contractors.

1558

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Q. Did you have an accountant? A. They were supposed to have an accountant come in.

Q. Did you have one come in? A. They had it. I had nothing to do with it.

Q. Do you know his name? A. No, sir.

Q. Did you know his address? A. No, sir.

Q. Did he ever audit your books? A. I believe he did.

Q. Did you ever see an audit? A. No, all I did was take care of the books the way I stipulated.

1559

Q. Did you ever see in any record just how much your father agreed to contribute? A. No, sir.

Q. Did you ever see a balance sheet? A. No, sir.

Q. Did you ever deposit money in the bank? A. No, sir; they took care of that themselves.

Q. Did you ever draw checks yourself? A. Myself?

Q. Yes, not for yourself but for the purposes of the company? A. I wrote it out. They signed it.

1560

Q. I show you two checks here and ask you whether or not any portion of them is in your handwriting. A. No, sir.

Mr. Turkus: May those papers be marked for identification?

Mr. Barshay: Surely.

(Two papers marked Defendants' Exhibits D and E, for identification.)

Q. Do you recognize your father's signature on these checks? A. Yes, sir.

Q. Do you remember the name of the payee, Goldman?

Mr. Turkus: I object to counsel speaking of some record not in evidence.

Mr. Barshay: I offer it in evidence.

Mr. Turkus: I have an objection before the Court.

The Court: Sustained.

Q. Did you know a Mr. Goldman? A. I don't recollect the name.

1562

Q. Did he work for your father in that concern where you were a bookkeeper, A. Goldman?

A. The fellow worked on the trucks, you mean?

Q. Yes. Is that so? A. I think that was his name.

Q. You drew money to his order every week for the pay that he earned, didn't you? A. No, sometimes he only drew one blank.

Q. Did you know any person by the name of Goldman? A. I think that was the gentleman's name that worked for my father.

Q. How long did he work for your father? A. I don't remember.

1563

Q. Do you know how long Mr. Kelly stayed in that corporation? A. I do not know how long it was.

Q. Was it a month? A. I don't remember.

Q. Was it two months? A. I don't remember.

Q. Was it three months? A. I don't remember.

Q. Do you know whether your father paid in any portion of his agreed contribution? A. I do not know anything about that negotiation.

Q. Did you ever see your father turn over to

1564

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anybody in that corporation any money at all?

A. I don't know what you are talking about.

Q. Did your father ever tell you that he paid his share of his contribution in this corporation?

A. I don't know what you are talking about.

Q. You were with your father every day, were you not?

Mr. Turkus: I object to it. It is argumentative.

1565

The Court: Overruled.

Q. Will you answer? A. I don't remember that negotiation.

Q. How long did you work for this New York and New Jersey corporation which you say was broken up? How long did you work for them?

A. I didn't say anything of the kind.

Q. You didn't say it was broken up?

Mr. Turkus: No, because you objected and it was sustained by the court when I used the expression.

1566

Mr. Barshay: It was stricken out by the court and the Judge suggested the word "discontinued", sir.

Mr. Turkus: Your Honor, I have an objection to the form of the question.

The Court: It is a pretty hard burden to put on the court to remember every word of testimony. I think it was Mr. Turkus who put the question in that form and you objected.

Mr. Barshay: That is right.

The Court: And I suggested to change the word to "discontinued".

Mr. Barshay: All right, sir.

Q. Do you know whether after three months of this New York and New Jersey company's existence Mr. Kelly withdrew from the corporation by taking his contribution of the four trucks right out of it?

Mr. Turkus: I am going to object. The witness has indicated that he does not know of the situation.

1568

The Court: Do you remember that?

The Witness: I don't remember.

Q. Do you know how much each partner drew during those three months? A. How much each drew?

Q. Yes. A. Each had a weekly salary.

Q. How much? A. I don't remember, and they drew besides that themselves. I don't know.

Q. We will get to that, sir. How much did your father draw? A. I don't remember.

1569

Q. Was it \$25.00 a week? A. I don't remember.

Q. Was it \$30.00 a week? A. I don't remember.

Q. Was it \$15.00 a week? A. I don't remember.

Q. Was it \$20.00 a week? A. I don't remember.

Q. There were weeks when the company did not earn enough money to pay even \$5.00 a week to your father, were there? A. I don't remember anything like that.

1570

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Q. Did the finance company replevin your trucks? A. I don't remember anything like that.

Q. Did you know where the company kept its trucks? Do you know that? A. No.

Q. Do you know Pink's garage in Passaic? A. I recall the name.

Q. Do you know whether your company stored these trucks in that garage at that time? A. I don't remember that.

1571

Q. Do you know whether that garage retained possession of your company's trucks for failure to pay storage and gas? A. The trucks were on the street every day.

Q. Ultimately, do you know that? A. I do not know anything about that.

Q. That is what the company did. Do you know that the finance company replevined one of the automobiles, a Sterling truck, which your company bought, for failure to pay? A. I don't remember anything of the kind.

1572

Q. You don't know about that? Do you know whether or not the company gave out two checks to Mr. A. Goldman dated August 25, 1932, and August 18, 1932, each in the sum of \$30., which came back marked, "Insufficient funds", referring to Defendants' Exhibits for identification D and E? A. What was the date?

Q. August 18th and August 25th. A. What year?

Q. 1932. A. I don't believe I was working for them then.

Q. Do you know that there was an indebtedness due from that company to Mr. Goldman, an employee, in the sum of \$700. for back wages? A. I don't know anything about that.

Q. Do you know that the business never made

any money? Do you know that? A. How could we keep a family if we did not?

Q. You don't want me to answer that, sir. You answer my question. A. I answered I do not know anything of the kind. We lived very well.

Q. Do you know that your father was drawing a maximum of \$30. a week? A. I do not know how much they drew.

Q. Did you ever see the bank balance of the company? A. No, they never showed it to me. All I did, as I stated before—

1574

Q. Do you know that Mr. Kelly withdrew from the firm because he could not make a livelihood? A. I do not know why he withdrew from the firm.

Q. Do you know how long your father worked in that concern subsequent to Mr. Kelly's discontinuance with it? A. I don't remember.

Q. You don't remember that? Do you know whether it was eight months? A. I don't remember how long Kelly was in the firm.

Q. Does three months refresh your recollection? A. I don't remember.

1575

Q. Does eight months after Mr. Kelly left refresh your recollection as to how long your dad stayed? A. I don't remember. It is eleven years ago.

Q. Do you know that your father in desperation told Mr. Sobler and Mr. Bluestein that he can no longer exist on \$30. a week? A. I don't know anything about that.

Q. Were you present— A. No, sir.

Q. Wait a minute, please. When he came in

1576

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and he said, "I can work for Garfield for \$125. a week"? A. I don't remember.

Q. You know that he did go to work for Garfield? A. I do.

Q. And you know that Mr. Buchalter was an owner of Garfield at that time, don't you? Do you know that? A. I understood he was a silent partner.

Q. Silent or loud, do you know he was an owner of that concern? A. How would I know?

1577

Q. Do you know that the defendant Buchalter was the one who got your father that job for \$125. a week? Do you? A. I don't know.

Q. Did your father tell you that? A. (No answer).

Q. Did he? A. I do not know anything what happened. I went back to college.

Q. Did you know that the very man whom you say was at the Broadway Central Hotel—withdrawn. Your father moved to Passaic, did he?

Mr. Turkus: Objected to, unless the time be fixed.

1578

Q. When he went to work for Garfield after he left Sobler and Bluestein? Do you know or don't you? A. No.

Q. Do you know how long your father worked for the Garfield in which the defendant Buchalter was a partner after he left Sobler and Bluestein? A. I know he went to work for Louis Cooper.

Q. You knew Louis Cooper was Mr. Buchalter's partner, didn't you? A. How did I know?

Q. You did not know that then? A. I understood it to be. That is about all.

Q. Then he did not go to work for Louis Cooper; he went to work for the Garfield and every owner of the Garfield, didn't he? A. I don't know whether—

Mr. Turkus: Objected to. He said he was a silent partner.

Mr. Barshay: He said he was a silent partner.

The Court: He said he understood so.

Q. We will show you whether he was or he wasn't.

1580

Mr. Turkus: Is that a question to the witness, your Honor? If it is, I ask that it be stricken from the record.

Q. How long did your father work for the Garfield? A. Approximately five or six months.

Q. Is that your best answer? A. When is the date? When is the time?

Q. I am now talking about after he discontinued his connection with the New York and New Jersey. You say some time in 1932. A. I was at school then.

1581

Q. You communicated with your father, didn't you? A. I did not communicate.

Q. You saw your father? A. Just on holidays.

Q. You saw your mother, didn't you? A. I did not go home until the semester. It is almost five months already.

Q. No matter when. A. I was at school then.

Q. Do you know that your father worked for Garfield? A. That is all I know.

1582

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Q. For about two years after he left Sobler and Bluestein? A. He certainly did not.

Q. Do you know that of your own knowledge? A. Yes.

Q. He didn't? A. That is right.

Mr. Turkus: Did not.

Mr. Barshay: Didn't.

1583

Q. Do you know now of your own knowledge when he commenced employment with Garfield after he left the New York and New Jersey and when he discontinued his connection with the Garfield? A. I know he approximately started in September of that year.

Q. September of 1932? A. I think.

Q. Do you know when his services ended with them? A. No, I was at school.

1584

The Court: May the court interrupt?

Mr. Barshay: Yes.

The Court: For the edification of all concerned on the question of prior statements: The Walsh case was made the subject of discussion in the Schainuck case by the Court of Appeals last month. That opinion is in the Law Journal and in the advance sheets. I suggest that counsel read it.

Mr. Barshay: We will, sir.

The Court: Because the rule as brought up to date by the decision in the Schainuck case will have to be followed here.

Mr. Rosenthal: I happen to have

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1585

argued that case in the Court of Appeals, your Honor.

The Court: Yes, you did.

Mr. Rosenthal: So, if I may—

The Court: Judge Desmond wrote the decision.

Mr. Rosenthal: That is correct, but the rule has been amplified, and if your Honor desires—

The Court: It seemed to me to be amplified when I read it.

Mr. Rosenthal: I would like to submit 266 of the Code of Criminal Procedure and also Wigmore on Evidence on the question whether we are entitled to use them ourselves for our own edification in order to enable us to properly cross-examine.

1586

The Court: The opinion, I think, cites those and also a provision of the New York City Charter in relation to the production of police reports.

Mr. Rosenthal: That is correct.

The Court: I will read the opinion carefully at the completion of this afternoon's session.

1587

Mr. Rosenthal: I have here—

The Court: I won't interrupt to read it now.

Q. Do you know the exact date when your father discontinued his services for the New York and New Jersey Corporation? A. No, sir.

Q. Do you know that that corporation continued to exist after your father went to work

1588

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for Garfield? A. Are you telling me a question or are you asking me a question?

Q. You leave your rhetoric in your school. I am asking you a question.

Mr. Turkus: Your Honor, I object.

The Court: Will you read that again?
(Last question read by the reporter.)

The Court: Do you know or don't you?

The Witness: I do not know.

1589

Q. Did you know Louis Cooper of Garfield?

A. Yes, sir.

Q. Did you ever talk to him? A. Yes, sir.

Q. How many times? A. I don't remember.

Q. Do you know the first time your father worked for the Garfield, the very first time, some time in 1922 or 1923; do you recall that? A. I don't know what year it was. I was young. I remember he worked for him.

Q. About how old were you? A. If it is 1922, I was born in 1911, I was eleven years old.

1590

Q. Do you know or do you recollect, or did you learn, how long your father worked for the Garfield the very first time he worked? A. I don't remember.

Q. Do you know the cause of your father's ceasing his employment with the Garfield the second time? A. I don't know.

Q. Did you ever hear? A. I don't know anything about it.

Q. Not a word? A. I don't know anything about it.

Q. Do you know whether Louis Cooper fired him? A. I don't know anything about that.

Q. Do you know whether your father was fired from any other place of employment? A. Not to my knowledge.

Q. Do you know the firm of Epstein & Siegel? A. No, sir.

Q. Did you ever hear of them? A. No, sir.

Q. Do you know who obtained employment for your father with Larry Cooper after he quit or after his employment terminated with Garfield? Do you? A. I heard it mentioned.

Q. Wasn't it the defendant Buchalter who obtained— A. No, sir.

Q. Let me finish, please. Wasn't it the defendant Buchalter who obtained for your father employment with Larry Cooper in Brooklyn? A. I do not know anything about that.

Q. Did you know Larry Cooper? A. I probably do but—

Q. That is the last position your father held before he purchased the candy store. Do you know that? A. Yes, sir.

Q. Do you know how long he worked for Larry Cooper? A. A few months. I was not in New York at that time.

Q. Do you know how your father happened to quit employment with Larry Cooper? A. No, sir, I was not in New York at that time.

Q. Do you know it? A. No, sir.

Q. Did he tell you? A. No, sir.

Q. Did he tell you he was suffering from a heart condition? A. No, sir.

Q. Did you know he was suffering from a heart condition? A. No, sir.

Q. Do you know your father was sick? A. Yes, from aggravation.

1594

Harold D. Rosen—For People—Cross

Mr. Barshay: I move to strike out the answer.

Mr. Turkus: I move that it stand.

Mr. Barshay: One motion at a time, Mr. Turkus.

The Court: Strike it out.

Q. Do you know Larry Cooper did not discharge your father? You know that? A. I do not know anything about that.

1595

Q. You know your father quit of his own volition with Larry Cooper?

Mr. Turkus: Objected to. The witness says he does not know.

Mr. Barshay: On direct examination he said, "I ought to know. I was the bookkeeper."

Mr. Turkus: That is twisting something else.

Mr. Barshay: We will see.

1596

Q. All right, Mr. Witness.

Mr. Turkus: Do what you want.

Q. Do you know that the defendant Buchalter was instrumental in getting your father his last employment with Larry Cooper by causing a transfer of Larry Cooper's employee, Mr. Kranes, transferring him to the Garfield in New Jersey so your father could have a job? Did you know that? A. I don't know.

Q. You never heard it? A. No, sir.

Q. Your father never told you that? A. Father never spoke much about that.

Q. Your mother never told you that? A. Did not speak much about that.

Q. Do you know where your father got the money to purchase the candy store? A. Yes, sir.

Q. You do? A. He told me.

Q. Did he tell you that the fellow employees in the trucking, the employees chipped in to give him that money? A. No, sir.

Q. Do you recall the first time your father worked for Garfield in New Jersey, Mr. Witness, the defendant Buchalter had no connection with that concern? Do you know that? A. As far as I know.

1598

Q. Do you know the second time that your father worked for the Garfield the defendant Buchalter did have an interest? A. I don't know much about that, Mr. Barshay, don't know anything about that.

Q. You lived in Passaic in 1924, didn't you? A. Yes, I went to high school.

Q. You know Mr. Bluestein paid all expenses to bring your family over when he was at that time connected with the Garfield, don't you? A. Maybe he did.

1599

Q. Do you know the reason for the discharge of your father by Garfield at that time? A. No, sir.

Q. Do you know the condition upon which your father was reengaged with the Garfield? A. I didn't know he was discharged.

Q. Do you know that he was discharged by Mr. Louis Cooper of the Garfield in his last connection with the Garfield? Do you know that? A. I did not know anything about that.

Q. You don't know the reason for it either?

1600

Harold D. Rosen—For People—Cross

Do you know how many times the defendant Buchalter interceded with Louis Cooper on your father's behalf to reengage him and to keep him with the Garfield? A. I don't know anything about that.

Q. You are definite about the fact that you never testified before any Grand Jury since Judge O'Dwyer became the District Attorney? A. Not to my knowledge.

1601

Q. And the only person and the first time that you were questioned was by Mr. Joseph since Judge O'Dwyer became the District Attorney, with respect to this case? A. That is right.

Mr. Barshay: I call upon your Honor to ask the District Attorney to produce for the Court, not to me, to the Court, both the original statement he made to Mr. McCarthy and his original testimony in the Grand Jury so that the Court can see for itself whether or not therein there are contradictions with respect to this witness' testimony now.

1602

The Court: All right.

Mr. Turkus: What is it that should be produced?

Mr. Barshay: Mr. McCarthy's statement or if you want to term it his statement to Mr. McCarthy and his original testimony before the Grand Jury then.

The Court: This gives no assurance by the Court that the Court will review the Grand Jury minutes. I will decide that later. The thing I have to consider is this: In a lengthy examination such as

this, the Court may or may not follow all of the intricacies accurately. In reading over Grand Jury minutes the Court may or may not slip up on something that somebody else would notice. If the Court does and does not call attention of counsel to it, it places the integrity of the Court under challenge. The Court will not be placed in that position.

Mr. Barshay: Of course, the Court knows it is not intended to do it.

1604

The Court: I know it but it could before another tribunal in a certain eventuality and I cannot afford to have my own reputation risked. I will just see how far I have to go under the authorities to date and I will endeavor to comply with the law as now declared by the Court of Appeals.

Mr. Barshay: May we mark it for identification, sir?

The Court: Yes. Offhand I think that as far as statements taken, not Grand Jury minutes but statements, that you are entitled to see them with deletion of such parts as do not concern you—

1605

Mr. Barshay: That is correct.

The Court: Or are confidential to the inquiry.

Mr. Barshay: That is correct.

The Court: The paradox of the situation seems to be that while you can demand the District Attorney's statements under the rule the District Attorney cannot get hold of yours.

Mr. Barshay: Well, in this case he can.

1606

Colloquy

The Court: That is voluntary. I am talking about the law.

Mr. Turkus: I hand to the Court, subject to its direction—

1607

The Court: Before you hand them to the Court, go over that statement yourself after court hours this afternoon and mark out such parts as you claim the defendant is not entitled to an inspection of. The Court will review those. As to the rest, counsel for defense will be entitled to see them.

Mr. Barshay: Are we marking them for identification?

Mr. Turkus: These Grand Jury minutes of 1936 (Defendants' Exhibit F for identification) for the record it is more than the Grand Jury testimony of this witness. Now I offer for marking for identification statements of witnesses taken by the office of Mr. Geoghan in 1936, containing the statement made by the witness Harold E. Rosen.

1608

(Statement marked Defendants' Exhibit G for identification.)

Mr. Barshay: Now may we mark for identification the statement that this gentleman signed for Mr. Louis Joseph?

The Court: Yes.

(Statement marked Defendants' Exhibit H for identification.)

Colloquy

1609

Mr. Turkus: That includes some memorandum in the handwriting of Mr. Joseph as well. I also have a memorandum of my own that I used to question the witness. Do you want that marked, too?

Mr. Barshay: When I will, I will ask you for it.

Mr. Turkus: I thought maybe you forgot it.

Mr. Cuff: Don't be smart like that, Mr. Turkus. We did not forget it and we do not want it and it is of no use to anybody but you. That is not a fair thing to say. We asked for what we are entitled to get.

1610

Mr. Barshay: I have no further questions, your Honor. If necessary may we have this witness back?

The Court: Any other counsel?

Mr. Talley: No cross-examination on behalf of defendant Weiss.

The Court: In that event, I will take that matter up right now.

Mr. Talley: I move that the testimony of this witness be stricken out so far as it concerns the defendant Weiss.

1611

The Court: Denied.

Mr. Talley: Exception.

Mr. Rosenthal: Do I understand your Honor denies it or reserves on that, subject to it being connected with a particular defendant other than the defendant Buchalter?

The Court: Denied at this time.

Mr. Rosenthal: Exception.

1612

Colloquy

The Court: May I have the papers now?

Mr. Turkus: I have not been able to read them.

The Court: The jury may go out for a few minutes while this is being read. Don't discuss the case, gentlemen.

I will now hand to counsel the statement given to Louis Joseph marked for identification Defendants' Exhibit H.

1613

As to Exhibit G for identification, that statement is intermingled with many matters which were not brought out here, which are not contradictory of anything the witness has testified to but which by their very nature are secret and may not be disclosed. The Court finds upon reading nothing which impresses the Court as in any way contradicting any of the testimony by the witness in this case. Therefore, Exhibit G for identification will be returned to the District Attorney.

1614

It is to be noted in this case that the witness has made no admission as having made previous inconsistent statements which was apparently the turning point in the Schainuck case. The Court will now read the Grand Jury minutes of 1936 of this witness' testimony.

Mr. Barshay: Exception.

The Court: The same applies to the Grand Jury minutes. There is considerable matter which is purely supplemental which was not brought out on direct examination, for what reason the Court cannot

Colloquy

1615

question, but it is not contradictory and it does not amplify anything the man has testified to, so far as the Court can see. Returned to the District Attorney.

Mr. Barshay: May we make a request upon the Court? Counsel would like to know whether or not the Grand Jury minutes that your Honor has just referred to contain any reference by this witness to any meeting in the Broadway Central Hotel in 1932?

1616

Mr. Turkus: I object to any disclosure.

Mr. Barshay: That is for the purpose to see whether or not there is any inconsistency, that is all.

The Court: Apparently he was not asked.

Mr. Barshay: Then I take it from that answer—

The Court: There is a reference in the other exhibit which was turned back to counsel.

Mr. Barshay: I know that.

1617

The Court: And that reference mentioned something that was not mentioned here but which is not contradictory. It mentions that he was alarmed because he saw Lepke during that conversation put his hand in his pocket and he thought that might be intended as a threat.

Mr. Barshay: Judge, that has reference to Mr. Joseph's statement.

Mr. Turkus: No, no, it has not. It has reference to the September 13th—

Mr. Barshay: I did not see that.

1618

Colloquy

Mr. Turkus: The statement taken by McCarthy was taken in advance of the Grand Jury testimony.

Mr. Barshay: I know that, Mr. Turkus, but I cannot speak of the statement. The judge did not allow me to look at it so I do not know what is in it.

The Court: No, you cannot see it.

Mr. Barshay: May we have an exception.

1619

Mr. Talley: If your Honor pleases, while we are on the subject, and I think your Honor has examined the law further since the session yesterday, I renew the motion I made for the inspection of the Grand Jury minutes with respect to the testimony of Mrs. Rosen.

The Court: Mrs. Rosen?

Mr. Talley: Who was on the day before yesterday.

Mr. Turkus: You read the Grand Jury minutes.

1620

The Court: I thought I read it.

Mr. Talley: My motion is for leave to inspect the testimony of Mrs. Rosen given before the Grand Jury with respect to matters about which she testified on Monday last.

The Court: You are not entitled to that under the authority. Denied.

Mr. Talley: I submit that I am. If your Honor holds differently, I will note my exception.

The Court: Bring back the jury.

When I spoke of supplemental matters

in the Grand Jury minutes, in 1936, I said the Court could not question or conjecture as to why the witness was not asked about those matters. I have to assume that it may be held in reserve for some other applicable time in the trial of the case.

Mr. Talley: It seems to me that the authorities are quite plain upon our right to those Grand Jury minutes. We cannot point our specific inconsistencies between the testimony on the trial—

1622

The Court: I have ruled on that with knowledge of what the Court of Appeals has written and what I have ruled I claim to be consistent. You have your exception.

Mr. Talley: May I finish my statement, your Honor?

The Court: I thought you had, Judge.

Mr. Talley: No, I have not. I say it is impossible for us to point out to the Court inconsistencies or contradictions or omissions between the testimony given upon the stand in the course of the trial and the testimony given before a Grand Jury unless those Grand Jury minutes are exhibited to us and until we can examine them. Your Honor has taken the burden. You have stated how difficult it was for the Court to follow all the statements given in the testimony and then check up on the Grand Jury minutes, but that is something we could do or at least we should be given an opportunity to do. As I understand the procedure, once that

1623

Colloquy

question is raised we are entitled to inspect so much of the Grand Jury minutes as relates to the testimony of a witness whose testimony is challenged. I want to make my position perfectly clear upon the record so that my exception to your Honor's ruling will be understood.

Mr. Rosenthal: I intend, your Honor, when anything affects me to enlarge upon the proposition because I feel sure that your Honor is in error in construing the case which I argued, and I know under what theory I argued it, and I know that one particular statement in the opinion in which they said—

Mr. Turkus: Here is the jury.

The Court: I have just read the entire opinion.

Mr. Rosenthal: I said I will wait.

(The jury returned to the court-room.)

Mr. Barshay: No further questions, your Honor.

Mr. Talley: There is no cross-examination on behalf of defendant Weiss.

Mr. Rosenthal: No cross-examination.

Mr. Turkus: May it please the Court, the statement taken on the 28th day of April, 1941, at the home of this witness, Harold E. Rosen, by Louis Joseph, in his handwriting, and subscribed by the witness, marked Defendants' Exhibit H for identification, was pursuant to the direction of the Court turned over to the defendant Buchalter's counsel for reading.

The Court: This does not concern the jury, and the Court knows it.

Mr. Cuff: I object.

Mr. Turkus: I have not finished my motion.

Mr. Barshay: I object to Mr. Turkus finishing his motion.

The Court: I excused the jury because I did not want the jury to be confused by the procedural questions.

Mr. Turkus: It having been read by the defendants' counsel, I offer it in evidence for reading by the jury.

1628

Mr. Barshay: I object to its being offered in evidence. That is an ex parte statement.

The Court: Sustained. Is that all with this witness?

Mr. Turkus: That is all of this witness.

Mr. Barshay: May the Court recall my motion? I objected to Mr. Turkus's statement and I ask for the withdrawal of a juror and the declaration of a mistrial.

1629

The Court: What statement?

Mr. Barshay: That Mr. Turkus—

The Court: Was there any statement that I did not hear?

Mr. Barshay: No, your Honor, he offered something in evidence, and I want to preserve my record.

The Court: Oh, yes.

Mr. Barshay: Now I move for the withdrawal of a juror.

The Court: I thought there might have

1630

Colloquy

been another complication between counsel.

Mr. Barshay: No, it is not complicated. I am trying to preserve my record.

The Court: Denied.

Mr. Barshay: Exception.

1631

Mr. Turkus: With the Court's permission, I will take a witness or two out of order, that will take a short time, in the regular order of proof, because the next witness's testimony could not be even completed on direct before the usual hour of adjournment.

The Court: All right.

1632

Hyman W. Barron—For People—Direct

1633

HYMAN W. BARRON, residing at 135-21 229th Street, Laurelton, Long Island, New York, called as a witness on behalf of The People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Mr. Barron, what is your profession or occupation? A. I am a civil engineer.

Q. And by whom are you employed? A. The Police Department, City of New York.

1634

Q. And how many years—

Mr. Rosenthal: I concede his qualifications.

Mr. Barshay: On my behalf.

Mr. Turkus: And you, Judge Talley?

Mr. Talley: Yes.

Mr. Turkus: All right, the qualifications of the witness are conceded by all counsel for defendants.

Q. Did you, in pursuance of your regular course of duties as a civil engineer for the Police Department of the City of New York, make a plan or a map of the candy store at 725 Sutter Avenue and the surrounding locale, indicating its position on Sutter Avenue in relation to Bradford Street and Wyona Street? A. I did.

1635

Q. Prior to making the map or plan, did you consult the records of the Building Department and other departments, municipal departments, of the City of New York indicating the type of property, its location on the block, whether or not there had been any structural or other

1636

Hyman W. Barron—For People—Direct

changes, and all pertinent facts in regard to the property? A. I did.

Mr. Turkus: I ask that this map be marked for identification.

Mr. Barshay: As far as we are concerned, you can mark it in evidence.

Mr. Turkus: The interior of the store he made from photographs.

1637

Mr. Rosenthal: As far as counsel is concerned, if it is explained on the record the details alleged to be contained in the candy store are taken by a description having been given to the witness as to the location and from photographs, there is no objection to the picture going in evidence.

Q. You said before in the regular course—

1638

Mr. Talley: I want to be sure that this sketch shows the store as it existed in September, 1936. If that cannot be shown, the map is incompetent.

(Map marked People's Exhibit P for identification.)

Q. Mr. Barron, will you look at People's Exhibit P for identification and tell us whether or not that is a plan or map that you have drawn? A. It is.

Q. Tell us what you did in connection with its drawing, where you got the material from and everything that you did in connection with drawing that plan.

Hyman W. Barron—For People—Direct

1639

Mr. Talley: May we have the date when it was drawn?

Q. Yes, tell the Judge the date and everything about it. A. This survey was made on May 12, 1941. We went into the store, took the actual dimensions of all things that are in the store, such as tables, chairs, soda fountain, and other counters. The dimensions of the store have not changed, because the Building Department has no record of any alterations being made in that store from that date.

1640

Q. As to the physical layout of the counters, the chairs, and the tables, did you do that from photographs of the premises taken at the time of the homicide? A. We did.

Q. And is People's Exhibit 1 in evidence one of the photographs used by you in getting the placement of the various articles, including the tables and chairs and counters? A. It is.

Q. All right, Mr. Barron, continue and tell the Court and jury how you got that together and what it is all about. A. There is the entrance to 725 Sutter Avenue, the candy store, which is on the north side of Sutter Avenue. It is 26 foot 2 inches from the corner of Bradford Street and 157 foot 5 inches from Wyona Street. We took the surrounding buildings in that area over to Belmont Avenue. All these dimensions of the stools and tables are from the furniture in the store, and we were told by the owner of the store that that is the furniture that was there when he bought the place.

1641

Q. You have stated a conversation that you

1642

Hyman W. Garrison—For People—Direct

had with the owner of that candy store. A. Yes, sir.

Q. Do you know when that owner took possession of the candy store? A. I do not.

Mr. Turkus: That portion of it which he recited as a conversation with the candy store proprietor is, of course, hearsay, and not admissible, so I ask that it be stricken out.

1643

Q. That is a rule of evidence that you are not acquainted with. That is all right. You continue and tell us what you did. A. From the photographs we laid out the chairs and the tables in the approximate location as shown on it by taking dimensions on the photograph and comparing it with actual dimensions taken in the store.

The Court: You mean People's Exhibit 1?

1644

Q. That photograph? A. That is right.

Q. Did you have more photographs than that? A. Yes, there were four of them all together.

The Court: Are they in evidence?

Mr. Turkus: No, they are different views.

The Court: Then what value has this? Has the furniture arrangement any relation to the crime? Does it concern this trial?

Mr. Turkus: There won't be a point in dispute about it.

The Court: Then we will just disregard it.

Mr. Turkus: All right, if you want to disregard it, we will disregard it. I went to the pains of rebuilding it.

The Court: I did not say what I want. Go ahead in your own way.

Q. Continue, Mr. Barron. Look at People's Exhibit 1, that is the small photograph. A. Yes, sir.

Q. Did you use that People's Exhibit 1 in evidence in drawing your plan showing the interior of the store, to place the various articles, such as the ice cream fountain, the telephone booth, and the fixtures in the store, on that plan? A. We did.

1646

Q. Now, does that plan truly reflect the set-up of those fixtures as they are portrayed on People's Exhibit 1 in evidence, the photograph in your hand? A. It does.

Q. Does the plan also show the true and correct position of the store, 725 Sutter Avenue, in relation to the corner of Bradford Street and in relation to the corner of Wyona Street? A. It does.

1647

Q. Does the plan also truly and accurately reflect conditions of September, 1936, with respect to the buildings that you have indicated on the plan, namely, the store at 725 Sutter Avenue and the other buildings down the street to Wyona Street, and the one building adjoining the grocery store on the Bradford Street side?

Mr. Talley: I object to that, if your Honor pleases. I distinctly object to try-

1648

Hyman W. Barron—For People—Direct

ing to prove a diagram made in 1941, when we are concerned with the happenings in September, 1936.

The Court: Overruled.

Mr. Talley: Exception.

This witness does not know the condition of those buildings in 1936.

Q. Will you continue, Mr. Barron? A. It does show the condition.

1649

Q. In 1936? A. That is correct.

The Court: How do you know 1936?

The Witness: I have been down to the Building Department and looked over their records, and they have no alterations shown on that block.

Q. Why, the plan merely shows the width of each lot all the way down, doesn't it? A. We do have the dimensions.

Q. Now look at People's Exhibit 2 in evidence.

1650

The Court: Are these all old buildings?

The Witness: Yes, sir.

The Court: More than five or six years old?

The Witness: Much more than that.

The Court: Go ahead.

Q. With respect to these stores on each side of the candy store, will you look at People's Exhibit 2, in evidence, taken the very day of the homicide, and tell us if your map truly reflects

Hyman W. Barron—For People—Direct

1651

the conditions on it as they were in September, 1936? A. It does.

Q. You have indicated a place across the street from 725 Sutter Avenue, a little indentation on your map, is that correct? A. We have.

Q. And what is the one down further? A. That is the entrance to number 720.

Q. 720 Sutter Avenue? A. That is correct.

Q. Look at People's Exhibit 3, in evidence, and tell us whether or not that is not the building that that 720 refers to. A. It is.

1652

Q. Look at People's Exhibit 4, in evidence, the photograph taken through a window from those premises, 720, showing the view across the street to the candy store, and tell us whether you have marked that window on the diagram. A. We have.

Q. And will you indicate it with your finger? A. (Indicating) This window up here.

The Court: Indicating what?

Mr. Turkus: He is indicating, for the record, the first indentation on the right hand side of the plan nearest to the north mark on the plan.

1653

The Court: Directly opposite the doorway of the premises.

Mr. Turkus: Directly opposite the premises in question, 725 Sutter Avenue.

Q. Now, are each and every one of those measurements accurate measurements? A. They are.

Q. Were the measurements made under your personal supervision? A. They were.

1654

Hyman W. Barron—For People—Direct

Q. And with your personal cooperation? A. Yes, sir.

Q. Who worked with you on the plan? A. Mr. DeSario.

Q. What is his official title? A. He is a draftsman.

Q. Is he employed by the Police Department? A. He is.

1655

Q. And is he a draftsman associated with you in the performance of duties for the Police Department? A. Yes.

Q. Are you known as civilian employes of the Police Department? A. Yes, sir.

Q. Does the map indicate a residence on Wyona Street? A. It does. It shows number 345 on the east side of the street and it shows a house number 320-322 on the west side of the street.

Q. And those numbers refer to houses on Wyona Street? A. That is correct.

Q. Are these measurements in all details correct and accurate? A. They are.

1656

Q. Have you drawn your plan to scale? A. We did.

Q. What is the scale? A. The location plan is drawn, one inch on the plan is actually ten feet on the street, while the view of the store, one and a half inch on the plan is actually one foot.

Mr. Turkus: I offer the plan in evidence.

Mr. Talley: I object to it as not being properly proved.

The Court: Any other counsel wish to object?

Mr. Turkus: They have consented.

The Court: Overruled. You conceded his qualifications, did you?

Mr. Talley: I concede this gentleman is qualified to make a plan and make measurements and draw the design from such measurements as he has made. My objection is that a plan of this kind, made in 1941, has not been sufficiently proven to show that the conditions set out on the proposed exhibit existed, as they are set out in that exhibit, in September, 1936.

1658

The Court: Overruled.

Mr. Talley: Exception.

(People's Exhibit P, for identification, received and marked People's Exhibit 24, in evidence.)

Q. Now, does your plan, People's Exhibit 24, in evidence, show a bullet hole in the wall of the candy store entering near the edge of a mirror hanging on the west wall at a point forty-seven and a half inches up and ninety inches from the north wall?

1659

Mr. Talley: I object to that as being too remote.

The Court: Sustained.

Mr. Turkus: I am going to take the testimony of the ballistics detective, Frederick W. Walsh, who accurately measured the bullet holes in the floor and the

1660

Hyman W. Barron—For People—Direct

one in the wall, and I am going to ask this witness to put those bullet holes into that exhibit.

Mr. Talley: I object to that.

The Court: You will have to have the record of this trial.

Mr. Turkus: Yes.

Mr. Talley: I object to it.

The Court: Overruled.

Mr. Talley: Exception.

1661

The Court: Has it any bearing on the case?

Mr. Turkus: I might make it visual to the jury so they can see where they are.

The Court: A lot of shots were fired and one bullet went through the wall.

Mr. Turkus: The bullets that I am particularly concerned with are the four bullets in the floor underneath the body. Those are the bullet holes.

1662

The Court: The detective testified to the precise number of feet and inches—

Mr. Turkus: I am not going to pursue it.

The Court: The detective testified as to the precise number of feet and inches as each bullet hole appeared in the floor, measuring from a stated place. You will be entitled to take that testimony of the detective and have the marks put on here by this man, under this concession as to his qualifications, to show where each one of those bullet holes was.

Mr. Turkus: Yes, Judge.

Hyman W. Barron—For People—Direct

1663

The Court: Only I would suggest you take it up with him over the recess so that he won't waste time here trying to make his measurements.

Mr. Turkus: Yes, your Honor.

The Court: And he will be prepared to make them promptly and it will save considerable time. It is now six or seven minutes of 4:00.

Gentlemen of the jury, please do not discuss the case, let no one talk to you about it. Keep your minds open. The court will remain in session while the jury passes out.

1664

(Recess until 10:00 o'clock tomorrow morning.)

(Defendants remanded.)

(Thereupon adjournment was taken to October 23, 1941, at 10:00 A. M.)

1665

1666

Hyman W. Barron—For People—Direct

Brooklyn, N. Y. October 23, 1941.

TRIAL RESUMED

HYMAN W. BARRON, a witness on behalf of The People, resumed the stand and testified further as follows:

1667

Mr. Turkus: May I respectfully refer your Honor to pages 153 et seq. in this regard in connection with the questions that I am about to put to this witness?

The Court: All right.

Mr. Turkus: And they will refer to People's Exhibits 8, 9, 10, 11, and 12 in evidence.

By Mr. Turkus:

1668

Q. Mr. Barron, will you attend at People's Exhibit 24 in evidence with a crayon or other pencil? Will you be kind enough to make an appropriate notation on People's Exhibit 24 in evidence of a place which was described by Detective Walsh as being a bullet which he removed at a point 7 inches from the right shoulder of the deceased, 52 inches from the west wall and 74 inches from the north wall? A. (The witness marks on Exhibit 24.)

The Court: He should have white chalk for this.

Q. To identify that mark, since that corresponds with the place where People's Exhibit 8

Hyman W. Barron—For People—Direct

1669

in evidence was found by Detective Walsh, will you put a figure "8"? A. (The witness does as requested.)

Q. The next bullet was removed from a bullet hole in the floor at a point $85\frac{1}{2}$ inches from the north wall and 53 inches from the west wall. Will you indicate that with an appropriate notation? A. (The witness marks on exhibit.)

Q. Alongside of that mark which you have just placed on People's Exhibit 24 in evidence, will you be kind enough to note the figure "9" which corresponds with People's Exhibit 9, the bullet which was removed from that point by Detective Walsh? A. (Witness marks on exhibit.)

1670

Q. In addition to Exhibit 9, there was removed from a point on the floor underneath the body another bullet by Detective Walsh, 82 inches from the north wall and 58 inches from the west wall. Will you be kind enough to make an appropriate notation thereof on People's Exhibit 24? A. (Witness marks on exhibit.)

Q. Mr. Barron, will you be kind enough to place alongside of the mark which you have just made for the bullet, People's Exhibit 10, the figure "10" to indicate that that is the point where that People's Exhibit was removed from the floor by Detective Walsh? A. (Witness marks on exhibit.)

1671

Q. In addition to those two bullet holes, 9 and 10, there was a third bullet removed from another hole underneath the body at a point $78\frac{1}{2}$ inches from the north wall and $57\frac{1}{2}$ inches from the west wall. Will you be kind enough to make an appropriate notation on People's

1672

Hyman W. Barron—For People—Direct

Exhibit 24 in evidence of that bullet hole? A. (Witness marks on exhibit.)

Q. The bullet removed from that point which you have just notated on the diagram People's Exhibit 24, was received in evidence as People's Exhibit 11. Will you be kind enough to place the figure "11" alongside of that bullet hole? A. (Witness marks on exhibit.)

1673

Q. In addition to People's Exhibits 9, 10, and 11, there was a fourth bullet recovered from underneath the body at a point 84½ inches from the north wall and 61 inches from the west wall. Will you kindly mark that on the diagram, People's Exhibit 24 in evidence? A. (Witness marks.)

Q. The bullet hole which you have just indicated on People's Exhibit 24 in evidence, there was removed therefrom People's Exhibit 12 in evidence. Will you put the figure "12" alongside of that bullet hole? A. (Witness marks on exhibit.)

1674

Q. Will you stand by People's Exhibit 24? Excluding the figure "8", indicating the bullet hole where People's Exhibit 8 was removed, which was 7 inches from the body, and specifically referring to People's Exhibits 9, 10, 11, and 12, which were the four bullets removed from the four bullet holes directly underneath the body, can you tell us approximately would those four bullet holes be within a 9-inch circle? A. They would fit into a 9-inch circle.

Q. Just one more point, Mr. Barron: When you made the drawing, People's Exhibit 24, and in preparation therefor, did you attend at premises 725 Sutter Avenue? A. I did.

Hyman W. Barron—For People—Cross

1675

Q. Did you there examine the furniture and fixtures portrayed on People's Exhibit 1 in evidence, and compare it with the fixtures that you found in this store? A. I did.

Q. Were they the same? A. They were.

Mr. Turkus: The witness is offered for cross-examination.

Mr. Barshay: No cross.

Cross-examination by Mr. Talley:

1676

Q. Mr. Barron, how wide on Sutter Avenue were these premises you just have been describing? A. The front of the store is 16 foot 5 inches.

Q. Is that it you just pointed to? A. This is the dimension here on the location plan.

Q. Those are the dimensions of the premises shown on the other side of the street; is that right? A. They are the dimensions of this candy store.

Q. Yes. Will you give me the frontage again? A. 16 foot 5 inches.

1677

Q. And is that 16 foot divided by the doorway? Is the door in the center?

Mr. Talley: May I have the photograph?

Mr. Turkus: It is the large photograph, People's Exhibit 2 in evidence.

Mr. Talley: Give me any pictures you have of the front of that store.

Mr. Turkus: That is People's Exhibit 2-A that I hand you.

1678

Hyman W. Barren—For People—Cross

Q. The door is approximately in the center?
A. In the center.

Q. What are the dimensions of the two show windows, each? A. The windows are 4 foot 8 inches wide at the front.

Q. And how wide is the door? A. The door is 3 foot 4 inches wide.

Q. How deep is the store? A. From the back of the show-window to the north wall is 16 foot 7 inches.

1679

Q. Will you indicate where the north wall is?
A. The extreme left of the drawing.

Q. What is that depth, please? A. 16 foot 7 inches.

Q. So that the store is approximately 16 by 16; isn't it? A. Approximately, right.

Q. 16 depth and 16 feet in width? A. The inside of the store is 14 foot $11\frac{3}{4}$ inches width.

Q. Then what is between the 14-foot line and the 16-foot line? A. It has a brick wall on either side.

1680

Q. What is back of the brick wall? A. The next store.

Q. What is the depth of the store? 14 or 16?
A. The depth is 16 foot 7 inches.

Q. From the inside of the show window? A. To the back wall, and the width is 14 foot $11\frac{3}{4}$ inches.

Q. The width is? A. 14 foot $11\frac{3}{4}$ inches.

Q. Are either of these windows open into the street? Is it the type of window that the customer can stand on the sidewalk and make a purchase? A. The easterly window can be opened.

Q. Point that out. A. (Witness indicates.)

Hyman W. Barron—For People—Cross

1681

Q. Does the opening extend the full length of that window? A. It does.

Q. And from the opening, if you know, can you see from the sidewalk the store, the interior of the store? A. You can.

Q. See all of it? A. Well, as much as would be visible through the window.

Q. That is practically all the store? A. Yes.

Q. And looking through the door, assuming it was open, you could see the entire store? A. You can.

1682

Q. And that would apply, what applied to the other window which you say is the open window, would apply to the remaining window? A. There is a partition in the back of the other window.

Q. Do you know whether that partition was there on the 13th of September, 1936? A. I do not.

Q. When you were there, there was a partition? A. There was.

Q. Was there any partition on the other window when you were there? A. No, there was not.

1683

Q. How high do you say the partition was? A. From the floor of the window up to the ceiling.

Mr. Talley: Have you any other picture that is large that shows the premises?

Mr. Turkus: Yes, the picture in back of Judge Taylor.

Mr. Talley: I want one of these smaller pictures. Have you got one?

Mr. Turkus: That is the only one taken

1684

Hyman W. Barron—For People—Cross

September 13, 1936, that I have. If you want a more recent one, I can show you that.

Mr. Talley: What are the other exhibits you have been directing this witness' attention to?

Mr. Turkus: People's Exhibits 1 and 2 in evidence.

Mr. Talley: I have no further questions.

1685

Mr. Rosenthal: No questions.

Q. Before you go, Mr. Barron, the width of this store you said was 16 and a half inches—16 feet $\frac{5}{8}$ inches? A. At the front of the store, yes.

Q. Will you indicate on that jury box the extent of 16 feet 5 inches? The railing for instance in front of where the jury sits, how long is that? A. It is about the width of the jury box.

1686

Q. You mean the entire width of the jury box from the both rails? A. Correct.

Mr. Talley: That is all.

The Court: Any other cross?

Mr. Rosenthal: No cross by defendant Capone.

Mr. Barshay: No cross. I move, your Honor, to strike out the testimony in respect to my client on the ground it is irrelevant and has no tendency to connect the defendant with the commission of the crime.

The Court: Denied.

Mr. Barshay: Exception, sir.

Anthony O. DeSario—For People—Direct

1687

ANTHONY O. DESARIO, residing at 610 Ovington Avenue, Brooklyn, called as a witness on behalf of the People, being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Mr. DeSario, by whom are you employed?
A. Police Department, City of New York.

Q. In what capacity? A. Draftsman.

Q. And how many years have you been attached to the Police Department of the City of New York as a draftsman? A. Twelve years.

1688

Q. Are you what is known as a civilian employee of the Police Department? A. That is correct.

Q. Attached to the engineering office? A. That is correct.

Q. Will you turn around and look at People's Exhibit 24 in evidence and tell us whether you worked with Mr. Barron, an engineer, in the making of that diagram and map? A. I did.

Q. Will you state your qualifications to the jury, and by that I mean for twelve years have you been actively engaged as a civilian draftsman for the Police Department? A. I have.

1689

Q. In the twelve years that you have been with the Police Department, have you drawn many drawings and maps to scale?

Mr. Cuff: Qualifications conceded.

Q. What part did you take in the making of People's Exhibit 24? A. We left the office and went to the District Attorney's office, went out

1690

Sylvia Greenspan—For People—Direct

to 725 Sutter Avenue, surveyed the surrounding streets, the inside of the store, including all the furnishings, made our sketches, and went back to the office and prepared our drawings.

— Mr. Talley: When was this?

Q. Do you recall the date? A. I do. May 12, 1941.

1691

Q. And is the date indicated on People's Exhibit 24 in evidence? A. It is.

Q. Is People's Exhibit 24 in evidence a true and accurate drawing to scale of premises 725 Sutter Avenue, Brooklyn, New York, and the surrounding locale thereon set forth? A. It is.

Mr. Turkus: You may inquire.

Mr. Barshay: No cross. Make the same motion with respect to this witness.

The Court: Denied.

Mr. Barshay: Exception.

1692

SYLVIA GREENSPAN, residing at 401 Schenectady Avenue, Brooklyn, New York, called as a witness on behalf of The People, and being first duly sworn, testified as follows:

Direct examination by Mr. Turkus:

Q. Mrs. Greenspan, are you married? A. Yes.

Q. And do you reside with your husband? A. Yes.

Sylvia Greenspan—For People—Direct

1693

Q. At the address that you have listed with the stenographer? A. Yes.

Q. Before you were married, what was your maiden name? A. Sylvia Rosen.

Q. Are you a daughter of the late Joseph Rosen? A. Yes.

Q. Who was killed on September 13, 1936? A. Yes.

Q. Were you employed by your father and the other members of his firm during your father's lifetime, as a bookkeeper? A. Yes.

1694

Q. Was the firm then known as the New York and New Jersey Clothing Transportation Company? A. Yes.

Q. Where was its office, Mrs. Greenspan? A. It was either on Washington Place or 8th Street off Broadway.

Q. Are you a bookkeeper? A. Yes.

Q. And how long have you been a bookkeeper? A. About 13 years.

Q. Did you have preliminary training or study? A. I had high school training.

Q. Will you speak loudly, Mrs. Greenspan? A. I had high school training.

1695

Q. At what high school? A. Passaic.

Q. And did you have a course in bookkeeping? A. Yes.

Q. When your father went into the business of the New York and New Jersey Clothing Transportation Company, who opened the books? A. I did.

Mr. Rosenthal: May I have a general objection to all this line of testimony by

1696

Sylvia Greenspan—For People—Direct

this witness on the ground that it is not binding upon the defendant Capone?

The Court: Yes.

Mr. Rosenthal: Subject to a motion to strike it out.

The Court: Overruled.

Mr. Rosenthal: Exception.

1697

Q. After you opened the books for the firm, do you know who acted as bookkeeper? A. My brother.

Q. And what is your brother's name? A. Harold.

Q. When Harold Rosen left as bookkeeper, who took his position? A. I did.

Q. How long did you remain as bookkeeper? A. About six or seven months.

Q. I do not hear you? A. About six or seven months.

Q. Was that when the business terminated? A. Yes, it did.

1698

Mr. Barshay: I object to that as a conclusion.

The Court: Overruled.

Mr. Barshay: Exception. I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. I want to direct your attention to the time when you had been in the employ of your father and his partners in the New York and New Jersey Clothing Transportation Company for about four months. Approximately when was that?

Sylvia Greenspan—For People—Direct

1699

Will you fix that time? A. To the best of my recollection it was during the summer of 1932.

Q. Did you say during the summer of 1932, to the best of your recollection? A. That is right.

Q. Will you kindly, Mrs. Greenspan, keep your voice up so that everybody in the jury can hear what you have to say and so that defense counsel as well will have no difficulty. Respond to this question—either yes or no only: Sometime during the summer of 1932 did you receive a telephone call from your father, the late Joseph Rosen?

1700

Mr. Climenko: If your Honor pleases, I object to even a yes or no answer on that question on the ground it is irrelevant, incompetent, not binding on the defendant, and has nothing to do with the issues in this case, and it is too remote to anything involved in this case.

The Court: Overruled.

Mr. Climenko: Exception.

1701

Q. Have you that question? A. Yes, I did receive a telephone call.

The Court: What year was that?

Mr. Turkus: During the summer of the year 1932, to the best recollection of the witness.

Q. Where were you, Mrs. Greenspan, when you received that telephone call from your father?

1702

Sylvia Greenspan—For People—Direct

Mr. Climenko: Same objection.

The Court: Overruled.

Mr. Climenko: Exception.

A. I was in the office of the New York and New Jersey Clothing Transportation Company.

Q. After you received that telephone call from your father, Mrs. Greenspan, what did you do?

Mr. Climenko: Same objection.

The Court: Overruled.

1703

Mr. Climenko: Exception.

A. My father asked me—

Mr. Barshay: Please— I move to strike out the answer.

Mr. Turkus: I consent to it.

1704

Q. Mrs. Greenspan, listen to me a moment. These are technical questions that you must answer exactly as I ask them. After you received the telephone call—you cannot tell us what your father said to you, but you can tell us—what did you do after you received that call? What was the first thing you did, and then what did you do? A. I took the books of the New York and New Jersey Clothing Transportation to where my father told me to.

Mr. Barshay: I move to strike it out.

Mr. Turkus: "to where my father told me to" I consent be stricken from the record.

Mr. Barshay: Your Honor, I think this witness ought to be told now to ad-

Sylvia Greenspan—For People—Direct

1705

here strictly to Mr. Turkus's suggestion not to volunteer anything at all because of the remoteness of the time she speaks of to the alleged commission of the crime.

The Court: Where did you take the books?

The Witness: I took the books to an office on 17th or 19th Street off Broadway.

The Court: Nobody can hear you. If the jury does not hear you testify, the jury does not know what the evidence is. Will you please repeat that loudly?

1706

The Witness: I took the books to an office on 17th or 19th Street off Broadway.

Mr. Barshay: I move to strike out the answer on the ground set forth heretofore.

The Court: Denied.

Mr. Barshay: Exception.

Q. Let me see if I understand you correctly. Did you take the books of the firm in which your father was a partner, namely, the books of the New York and New Jersey Transportation Company, and bring those books some place? A. Yes.

1707

Q. Where was that place that you took those books to?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: She said 17th or 19th Street off Broadway.

Mr. Turkus: All right. I did not hear it.

1708

Sylvia Greenspan—For People—Direct

Q. Was the place that you took the books to an office of a manufacturer?

Mr. Barshay: I object to it. It is leading.

The Court: Overruled.

Mr. Barshay: Exception. And on the ground that I heretofore urged.

The Court: Overruled.

Mr. Barshay: Same exception.

1709

Q. Have you followed the question? A. Yes, I did.

Q. And what is your answer, you did? A. Yes.

Q. When you arrived in this office with the books of the New York and New Jersey Clothing Transportation Company, whom did you see inside the office?

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Same exception.

1710

A. Four men.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Who are the four men, Mrs. Greenspan, whom you saw in the office when you went there with the books?

Sylvia Greenspan—For People—Direct

1711

Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

A. Max Rubin, Danny Fields, Buchalter and Shapiro.

Mr. Barshay: Same objection.

Q. Point out Buchalter.

1712

Mr. Barshay: Move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

The Court: Which Shapiro?

The Witness: He was commonly called Gurrah.

Mr. Barshay: We do not hear you.

Mr. Turkus: We do not hear you and the jury does not hear you.

The Witness: He was commonly called Gurrah.

1713

Mr. Barshay: I move to strike that out.

The Court: Denied.

Mr. Barshay: Exception.

Q. Will you drink the water? Possibly that will help you. In order to insure that the jury has heard the names of the four men in this office when you arrived there with the books, was one man Max Rubin? A. Yes.

Q. Was the other man in your testimony Danny Fields? A. Yes.

1714 *Sylvia Greenspan—For People—Direct*

Q. Was the third man Shapiro? A. Yes.

Q. Whom you say was also known as Gurrah?

A. Yes.

Q. The fourth man you say was Buchalter?

A. Yes.

Q. What name did you know Buchalter by besides Buchalter? A. Lepke.

Q. Where was your father? A. In that room.

1715 Q. Where was this man Shapiro, whom you say is also known as Gurrah? What position did he have in the room?

Mr. Barshay: I make the objection as I made before.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. He was sitting behind a desk.

Q. While Gurrah was seated behind the desk in the office, where was this man Buchalter, also known as Lepke?

1716 Mr. Barshay: Same objection.

A. He was standing—

Q. I did not hear you. A. May I answer?

Q. Yes.

Mr. Barshay: Please wait a minute.

Mr. Turkus: Excuse me. I thought the Court had ruled.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. Will you repeat the question?

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1717

Q. (Pending question read by the reporter.)

A. He was standing behind Shapiro.

Q. You will have to speak up loudly. Is your answer that Lepke was standing behind Shapiro?

A. Yes.

Q. Had you seen this individual Danny Fields before the time that you saw him in that office?

Mr. Barshay: Same objection.

The Court: Overruled.

Mr. Barshay: Exception.

1718

A. Yes, I did.

Q. Where had you seen Danny Fields before that occasion?

Mr. Barshay: Same objection, sir.

The Court: Same ruling.

Mr. Barshay: Exception.

A. I met him on 5th Avenue.

Q. In the clothing district? A. Yes.

Q. Was that during the time that you worked for your father and his concern?

1719

Mr. Barshay: Please. That may be an important question. Don't lead. I object to it.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. I met him previous to that and a number of times during that time.

Q. Had you seen this man Buchalter, also known as Lepke, before this occasion that you were in the office?

1720

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Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

A. Yes, I did.

Q. Where had you seen him?

Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

1721

A. I met him on 5th Avenue.

Q. In the clothing district? A. Yes.

Q. Had you been introduced to this man Buchalter, also known as Lepke?

Mr. Barshay: Please. I object to it. And I ask your Honor to tell the District Attorney now the defendant has been identified by one name or the other, and there is no need for "Buchalter also known as Lepke."

The Court: Overruled.

1722

Mr. Barshay: Exception.

A. Yes, I met him once.

Q. The question is: Had you been introduced to him? A. Yes.

Q. Who introduced you to Lepke? A. My father and Max Rubin were standing there, and I don't remember which one introduced me.

Mr. Climenko: If your Honor pleases, we move to strike out the answer as not

Sylvia Greenspan—For People—Direct

1723

binding on the defendants, not relevant to the issues in this case.

The Court: Denied.

Mr. Climenko: Exception.

Q. I take it, then—and am I correct—that from your last answer you had met Max Rubin before this occasion in the office.

Mr. Climenko: I object to that upon the same ground.

1724

The Court: Overruled.

Mr. Climenko: Exception.

A. Yes, I met him on a number of occasions.

Q. In the clothing district? A. Yes.

Q. And when you were introduced to Lepke, was that in the clothing district? A. Yes.

Q. Mrs. Greenspan, when you stepped into that office with the books of the concern, what happened?

I

Mr. Climenko: Object to that, if your Honor pleases, on the ground that it calls for an answer not binding on the defendants, not relevant to the issues here.

1725

The Court: Overruled.

Mr. Climenko: Exception.

A. I put the books on the desk, and Gurrah took the ledger, that is, the accounts receivable ledger, opened it up, and went through the accounts.

Mr. Barshay: I move to strike out the answer.

1726

Sylvia Greenspan—For People—Direct

The Court: Denied.

Mr. Barshay: Exception, sir.

Q. Your voice is very low, Mrs. Greenspan, and not quite audible to the jurors who sit in this part of the room. A. Sorry.

Q. Did you respond to that question and say that you brought the books into that office and put them on the desk? A. Yes, I did.

Q. And who picked up the ledger? A. Shapiro.

1727

Q. The man also known as Gurrah? A. Yes.

Q. At that time when Gurrah picked up the ledger, was the defendant Lepke in back of him?

Mr. Barshay: Same objection.

A. Yes.

Q. Directly in back of him?

The Court: Overruled.

Mr. Barshay: Exception. I move to strike out the answer.

1728

The Court: Denied.

Mr. Barshay: Exception.

Q. The question is: Directly in back of him?

A. Yes.

Q. What did Gurrah do with the book that he opened up?

Mr. Barshay: I object to it, not binding on the defendant, too remote.

The Court: Overruled.

Mr. Barshay: Exception.

A. He looked at the names of the accounts.

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1729

Mr. Barshay: I object to it unless she can say that of her own personal knowledge.

The Court: Overruled.

Mr. Barshay: Exception, sir.

Q. Will you continue, Mrs. Greenspan, and as loudly as you can talk, please? A. And he told my father that there were certain manufacturers that he could not go up to to take work from.

1730

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

The Court: Lepke said that?

The Witness: No.

Mr. Turkus: Gurrah.

The Witness: Shapiro.

Mr. Barshay: I renew my motion, sir.

The Court: Denied.

Mr. Barshay: Exception.

1731

Q. When your father was told by Gurrah what you told this jury in substance, namely, that he could not go to certain manufacturers for business, what did your father say, if anything?

Mr. Barshay: I object to it. It is not binding on this defendant.

The Court: Overruled.

Mr. Barshay: Exception, sir.

A. My father said he could not see why not, if the manufacturers were willing to give him

1732

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the work; he was carrying on a legitimate business, and he was going to take it.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. When your father said that, did anybody in the room answer him; yes or no? A. Well, at certain intervals—

1733

Mr. Barshay: Please. Yes or no.

The Witness: Yes.

Q. When Gurrah was talking to your father and said the things that you have told this Court and jury, what was Lepke doing?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

1734

A. At certain intervals he would bend over and whisper into Shapiro's ear.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Directing your attention to a point of time, at those intervals when Lepke whispered into Gurrah's or Shapiro's ear, how soon after that was it before Shapiro spoke to your father?

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1735

Mr. Barshay: Same objection, sir.

Q. Do you understand my question?

The Court: Same ruling.

Mr. Barshay: Exception.

Q. You may answer. A. Well, Shapiro would mention certain names of manufacturers and Buchalter would bend over and whisper in his ear, and then Shapiro would tell my father whether he could go up to that manufacturer or he couldn't.

1736

Q. You told this jury that your father said in substance that he did not see why he could not handle the business, he was doing a legitimate business; is that correct? A. That is correct.

Q. After your father said that, did anybody else in the room other than Shapiro enter into the conversation?

Mr. Barshay: Object to it.

The Court: Overruled.

Mr. Barshay: Exception.

1737

A. Yes, my father was becoming very excited—

Mr. Barshay: Please. I move to strike out the answer.

The Court: Strike it out.

Mr. Turkus: From "Yes" on I consent to. Does the Court permit the word "yes" to stand on the record?

The Court: Yes.

Mr. Barshay: Exception.

1738

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Q. Who entered and joined in the conversation?

Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

A. Max Rubin interceded then and advised my father to take what he can get.

1739

Mr. Barshay: I move to strike out that part of the answer.

Mr. Turkus: Up to the point "interceded" I say should stand, and from there on I consent be stricken.

Mr. Barshay: I object to the whole answer.

The Court: Of course it is competent if made responsive.

Mr. Barshay: First I objected to the question. Your Honor has overruled the objection. I now move to strike out the answer as not responsive.

1740

The Court: The latter part is not responsive.

Mr. Turkus: Does the record indicate that the answer up to the word "interceded" stands on the record?

The Court: Yes.

Q. You said that Max Rubin interceded. What did Max Rubin say?

Mr. Barshay: I object to it, not binding on this defendant, too remote.

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1741

The Court: Overruled.

Mr. Barshay: Exception.

A. May I answer?

Q. You may. A. Max Rubin advised my father to take what he can get.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

1742

Q. Did Danny Fields take any part in the conversation?

Mr. Barshay: Same objection.

The Court: Same ruling.

Mr. Barshay: Exception.

A. Not to my recollection.

Q. What happened after Rubin took a part in the conversation and gave your father he advice that you related to this Court and jury?

A. My father was very excited.

1743

Mr. Barshay: I move to strike that out.

Mr. Turkus: It is responsive. I submit it should stand.

The Court: Let it stand.

Mr. Barshay: Exception, sir.

Q. Will you continue? You say your father was very excited. Continue. A. And he said that he does not see why he should take that

1744 *Sylvia Greenspan—For People—Direct*

advice, he had worked very hard to build that up.

Q. Continue.

Mr. Barshay: Are you finished?

Q. You continue with your answer. A. He had worked very hard to build that up and he was going to continue to do so and not stop for anybody.

1745

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Describe your father's appearance at that time.

Mr. Barshay: I object to it.

Q. And by "appearance," I mean his facial expression.

1746

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. My father was very excited. He was pacing up and down and he became very, very white.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

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1747

Q. At that point, Mrs. Greenspan, did you say something?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes, I did.

Q. What did you say?

Mr. Barshay: Same objection.

1748

The Court: Overruled.

Mr. Barshay: Same exception.

A. I went over to my father and I told him he was getting too excited and would he please return with me.

Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did your father return with you? A. No.

1749

Q. Did he send you out from the office? A. Yes, he told me he would be all right and I should go back and wait for him.

Q. Did the books go back with you or did they stay in the office when you left?

Mr. Barshay: I object to it, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. I left the books there. I went back myself.

1750

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Mr. Barshay: I move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you return to your father's place of business?

1751

Mr. Barshay: Same objection, sir.

The Court: Overruled.

Mr. Barshay: Exception.

A. Yes, I did.

Mr. Barshay: Move to strike out the answer.

The Court: Denied.

Mr. Barshay: Exception.

Q. Did you see your father again after that?

A. Yes, he returned in about an hour.

Q. Did he have with him the books that you had brought over to that office? A. I don't remember.

1752

Q. How long after that occurrence was it that your father's connection with the New York and New Jersey Transportation Company as a partner terminated?

Mr. Barshay: Objected to.

The Court: Overruled.

Mr. Barshay: Exception.

A. About three months.

Mr. Turkus: The witness is offered for cross-examination.

Mr. Climenko: May it please the Court, the defendant Buchalter moves to strike out all of the testimony of this witness upon the ground that it refers to matters which are too remote to the issues involved in this case, upon the ground that the testimony is not binding on that defendant.

The Court: Denied.

Mr. Climenko: And is irrelevant to the issue here. Exception.

Cross-examination by Mr. Climenko:

Q. Mrs. Greenspan, when did you start working for New York and New Jersey? A. During the summer of 1932.

Q. Well, could you give me a date better than that? A. No, I can't.

Q. Well, do you know what month it was in the summer of 1932? A. No, I could not tell you that.

Q. I beg your pardon? A. I could not tell you that. I don't remember the exact month.

Q. Well, do you remember whether it was in June or July of 1932 that you started work there?

Mr. Turkus: Objected to. The witness has responded that she is unable to fix the month.

The Court: Overruled.

A. I don't remember the exact month.

1756

Sylvia Greenspan—For People—Cross

Q. I have heard that answer, and what I am now asking you is to please make an effort as you sit here now to think about it. After you make the effort, tell me whether you can remember the month. A. I cannot remember the month.

Q. So that, try as you may, at this moment you cannot recall the month when you started to work for New York and New Jersey? A. That is right.

Q. Is that correct? A. Yes.

1757

Q. Would you tell me when it was that you ceased to work for New York and New Jersey?

A. The only thing I can tell you is that I worked there for about six or seven months.

Q. I know that, Mrs. Greenspan, and I am trying to ask you to cooperate with me to the slight extent. As you sit here now, try to make that mental effort to think about it and tell me as best you can remember when it was you ceased to work for New York and New Jersey.

1758

Mr. Turkus: I object to it. The witness's memory has been exhausted on that point, nine years ago.

Mr. Climenko: Your Honor, I will agree after that question is answered it may have been exhausted. It has not been yet.

The Court: She says she does not remember. That entitles you to ask any leading question that may prompt her memory, but of course if she fails to respond in answer to that, that is as far as you can go.

Mr. Climenko: I understand, your

Honor. I merely put that as a conclusory question.

The Court: You may answer the question.

Q. Do you remember the question? A. Yes, I do.

Q. Having it in mind, can you make an answer to it? A. I cannot tell you any more than I did.

Q. So that you have no recollection as to what month you started work for New York and New Jersey and what month you quit work for New York and New Jersey, is that right? A. That is right.

1760

Q. Have you a recollection as to when, in month and year, your father first became associated with New York and New Jersey? A. To the best of my recollection, it must have been around April of that year of 1932.

Q. It was in April of 1932, you think, that your father first became connected with that firm? A. To the best of my recollection.

Q. Is that right? A. That is right.

1761

Q. Now do you remember when it was that your father's relationship with that firm ended? A. No, I don't.

Q. You have no recollection of that whatsoever? A. No.

Q. Have you any recollection as you sit here now as to whether that firm continued in business after your father's connection with it terminated? A. No, I had no interest in it after that.

Q. So that you don't know as a fact whether

1762

Sylvia Greenspan—For People—Cross

that firm continued in business after your father severed his connection with it? A. I know that it didn't continue, but whether it broke up at that particular moment or a month later, I don't know exactly.

Q. You know that it did not continue; is that your testimony? A. Yes.

Q. And do you know whether it continued for some time after your father severed his connection with it?

1763

Mr. Turkus: The witness has already said so.

A. No, I do not.

Q. Do you not know?

Mr. Turkus: To the best of her recollection, she said whether it broke up then or a month later she did not know.

The Court: That is what she said.

1764

Q. Do you know whether the firm may have continued for a year or five years after your father's connection with it was severed? A. I know it didn't continue that long.

Q. I beg your pardon? A. I know that it didn't continue that long.

Q. Are you ready to say as to your own knowledge that it ceased in business less than a year after your father severed his connection with it? Are you ready to say that?

Mr. Turkus: I object to the form of the question. The witness has indicated

Sylvia Greenspan--For People--Cross

1765

she had lost interest with the concern after her father's interest terminated.

Mr. Climenko: I withdraw the word "ready," but I press the question.

The Court: Just repeat it in modified form.

Q. Do you say that the firm continued for at least a year after your father severed his connection with it? A. I cannot say exactly.

Q. You really don't know, do you? A. I know that there was no New York and New Jersey Clothing Transportation for very long after my father severed his connections.

1766

Q. And I am now asking you, Mrs. Greenspan, to define that period "very long." Can you tell me how long you mean by that phrase? A. As far as I can remember, it could not have been more than a few months at the most.

Q. And you are ready to leave us with that impression that you know as a fact that it did not continue for more than three months after your father severed his connection with it?

1767

Mr. Turkus: Object to it.

The Court: She said a few months.

The Witness: I said a few.

Q. What does "a few months" mean, if I may ask that question? A. I could not say.

Q. You don't know? A. No.

Q. Well, does it mean two or does it mean six?

1768

Sylvia Greenspan—For People—Cross

Mr. Turkus: I object to the form of the question.

The Court: Sustained. It is obvious she cannot say.

Q. Do you mean more or less than a half a year? A. It might mean anything from two to six.

Q. Indeed it might mean anything. That is why I ask you this question.

1769

Mr. Turkus: Just a minute. I object to the preamble: "indeed it might mean anything." That is why I ask the question, and ask it be stricken from the record.

The Court: Let the preamble stand.

Q. Will you answer the question?

Mr. Turkus: There is no question.

1770

A. Will you repeat the question?

Mr. Climenko (to reporter): Will you read it?

(Pending question read by the reporter.)

Mr. Turkus: That is a statement.

Q. Did you mean more or less than a half a year? A. I don't know.

Q. You really don't know, do you? A. No, I don't.

Q. What month in what year did your father

sever his connection with New York and New Jersey? A. His connection was severed in 1932. I could not tell you the month exactly.

Q. And you don't know, as I understand your testimony now, how long New York and New Jersey continued in business after that time; is that correct? A. No, I don't.

Q. Is that right? A. That is right.

Q. That is true. Who were your father's partners in New York and New Jersey? A. Morris Bluestein; there was a man by the name of Kelly—I don't remember his first name.

1772

Q. And who else? A. I don't remember anybody else.

Q. You don't remember anybody else? A. No.

Q. So that your recollection is, as you sit here now, that your father had two partners in that firm? A. Yes.

Q. Is that correct? A. Yes.

Q. There were only these three interests; is that right? A. Yes.

Q. And you are the person who, as a book-keeper, opened a set of books for this firm? A. Yes.

1773

Q. Is that correct? A. Yes.

Q. Now, at the time that you opened the set of books, were you acquainted with the persons who made up or who had the interests in the corporation? A. I was at that time.

Q. You were at that time? A. Yes.

Q. Are you presently able to remember who those people were who had an interest at that time? A. Only those that I mentioned.

1774

Sylvia Greenspan—For People—Cross

Q. You cannot tell me whether there were any more or less? A. No, I can't.

Q. No? A. No.

Mr. Turkus: It could not be less. She named three.

Mr. Climenko: She could be wrong as to that.

Mr. Turkus: Ask her.

1775

Q. Do you know what Kelly's first name was? A. I don't remember his first name.

Q. Do you remember the other man's first name? A. I said Morris Bluestein.

Q. You did say Morris Bluestein? A. Yes.

Q. When did Kelly enter into this association? A. Almost immediately, I believe.

Q. I beg your pardon? A. Almost immediately, I believe.

Q. "Almost immediately" means when, in point of time? That is what I am trying to get.

1776

Mr. Turkus: I object to it. The witness said, "Almost immediately, I believe," so that it is speculative at best.

The Court: The jury understands what it means. This is all practical language used in every-day life among people.

Mr. Climenko: I am not trying to quibble with anybody, your Honor. I am just trying to get the entry day of Kelly's association with this business.

The Court: Of course, you must realize, going back nine years—

Mr. Climenko: Indeed, I believe it.

The Court: —you cannot expect to get everything you are asking for unless the witness has a remarkable memory. Then there might be some doubt about it.

Mr. Climenko: I just want to ask her one question. If she cannot answer it I will go to something else.

The Court: That is all right.

Q. Do you remember when it was that Kelly came into that business? A. No, I could not give you the exact date.

1778

Q. Do you remember when it was that your father went into that business? A. I believe I answered that before.

Q. Yes, what was your answer? A. I told you to the best of my recollection it was around March or April of 1932.

Q. Did Kelly go in there after your father did? A. My father started it.

Q. I beg your pardon? A. My father started it.

Q. Am I to understand you to tell us that your father started New York and New Jersey Transportation Corporation?

1779

Mr. Turkus: I object to the form of the question.

Mr. Climenko: I withdraw the question.

Q. Mrs. Greenspan, did your father start this business? A. You mean was it called the New York and New Jersey Transportation Company when my father went in? I am sorry I do not understand your question.

1780

Sylvia Greenspan—For People—Cross

Mr. Climenko: (to the reporter) Will you read what she said?

Mr. Turkus: The witness responded.

Mr. Climenko: Do you mind if I get it verbatim from the stenographer?

(The testimony requested was read by the reporter.)

1781

Q. Did your father start the business? A. I opened the books for the New York and New Jersey. As far as I was concerned, there was no concern before.

Q. So far as you know, there never had been a New York and New Jersey until that point when your father asked you to start that set of books? A. That is correct.

Q. Is that correct? A. That is correct.

Q. You do not know whether there had been a New York and New Jersey Transportation Corporation in existence? A. No, I don't.

Q. For one year or ten years before that time? A. No, I don't.

1782

Q. Is that correct? A. That is correct.

Q. And you don't know who the partners or other stockholders may have been in that corporation is that correct? A. Not before I opened the books.

Q. Do you know whether any books for such corporation had been in existence before the time— A. No, I don't.

Q. —that you opened the books that you did open? A. No, I don't.

Q. You have no knowledge of that? A. No.

Q. When you opened the books, did you speak

to anyone about it other than your father? Answer that yes or no. A. No.

Q. The only person you spoke to in relation to opening of the books was your father? A. Yes.

Q. Did your father make a contribution to the assets of that corporation to your knowledge, or is that a subject on which you have no information? A. I don't know.

Q. You really do not know? A. No, I don't.

Q. In opening the books, were you appraised—and answer this yes or no—were you acquainted with the contribution of other persons to the corporation? A. No.

1784

Q. Do you know anything about the capital contribution of anybody to the corporation? A. No.

Q. Nothing at all? A. No.

Q. When you opened the books, were you told anything about salaries of employees? A. No.

Q. Were you told who the employees were? I am not now referring to your father or people who were his associates. I am referring to employees of the corporation. Were you told who the employees were? A. Yes, I was.

1785

Q. You were? A. Yes.

Q. Can you remember the name of any of the employees? A. I might remember one or two.

Q. Did you speak to your brother last night after he left the witness stand? A. No, my brother left immediately.

Q. You have not seen your brother since he testified here yesterday? A. No.

Q. Is that correct? A. That is correct.

Q. Did you talk to him before he took the

1786

*Sylvia Greenspan—For People—Cross *

witness stand? A. I have spoken to him a number of times before he took the witness stand.

Q. Did you speak to him yesterday morning before he took the witness stand? A. Yes.

Q. In relation to his testimony or your testimony as it might be given here? A. No.

Q. You did not discuss with your brother the matter which he might be called upon to testify in this court? A. No.

1787

Q. Did you at any time discuss that with him? A. No.

Q. Did he ever discuss with you at any time the matters as to which you might be called on to testify in this court? A. No.

Q. It is clear that at no time yesterday did you discuss with your brother his testimony here? A. Yes.

Q. I beg your pardon? A. Yes.

Q. That is clear? A. Yes.

Q. That ~~such~~ a conversation did not take place between you and your brother? A. Yes.

1788

Q. And it is also clear that at no time prior to your taking the stand today did you ever discuss with your brother the subject-matter of his proposed testimony and your proposed testimony? A. Yes.

Q. I beg your pardon? A. Yes. We did not know what we were going to be asked.

Q. Then you did discuss that with your brother? A. I said no. How could we discuss it? We did not know what we were going to be asked.

Q. Did you talk with anybody in the District Attorney's office before you took the stand? A. Yes, I did.

Q. With whom? A. I spoke to Mr. Klein.

Q. Anybody else? A. I spoke to Mr. Turkus.

Q. Anybody else? A. No, that is all.

Q. Were you present when your brother spoke to either of those gentlemen? A. No.

Q. How many times did you talk with Mr. Klein or Mr. Turkus? A. Once to Mr. Turkus and once to Mr. Klein.

Q. And those are the only occasions? A. Yes.

Q. That you have spoken with those gentlemen? A. Yes. 1790

Q. Is that correct? A. Yes.

Q. Did you talk with your brother about what you had discussed with Mr. Turkus or Mr. Klein? A. No.

Q. Never? A. No.

Q. And he never told you what he might have discussed with either of those gentlemen or any of those associates? A. He couldn't.

Q. Did Mr. Turkus or Mr. Klein in talking with you refer to what they might have said to your brother or what he might have said to them? A. No. 1791

Q. No reference whatsoever? A. No.

Q. In your talk with Mr. Turkus or Mr. Klein, did they refer to anything that they might have said with your mother, or what your mother may have said to them? A. No.

Q. No? A. No.

Q. And then you never discussed with your mother prior to your taking the stand the matters about what you might be interrogated by Mr. Turkus here this morning; is that correct? A. I have no idea of what she would be asked.

1792

Sylvia Greenspan—For People—Cross

Q. No, no. I am afraid you misunderstood my question. Did you ever discuss with your mother the matters as to which, following your conversation with Mr. Turkus or Mr. Klein, you had a notion you might be interrogated by Mr. Turkus here? Do you understand it now? A. Yes, but I never discussed it with her.

Q. Never? A. No.

Q. And she never asked you any questions about it? A. No.

1793

Q. Is that correct? A. No.

Q. So that you took the stand this morning without any prior notice on the part of any member of your family—

Mr. Turkus: Objected to. That is not the fact.

Mr. Climenko: I have not finished the question.

Mr. Turkus: Excuse me.

Mr. Climenko: Since you object to that phrase, I withdraw it.

1794

Q. You took the stand with morning without ever having mentioned to any member of your family the matters which you had discussed with Mr. Turkus or Mr. Klein?

Mr. Turkus: Objected to. That has been answered at least five times with a series of questions.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Now I should like to ask you again just once: Can you now tell me whether there were

any other persons in New York and New Jersey other than the persons that you have mentioned?

Mr. Turkus: Objected to as already answered.

Mr. Climenko: If your Honor pleases—
The Court: Overruled.

A. No, I can't.

Q. You cannot think of any other persons?

A. No.

Q. Did you ever hear the name Sobler? A. Yes.

1796

Q. Who is he? A. I think he was one of the partners.

Q. Well, did he have an interest equal to that of your father? A. What would you call an equal interest?

The Court: Capital contribution.

The Witness: I do not know anything about the contributions.

Q. I beg your pardon? A. I do not know anything about the contributions.

1797

Q. Do you mean, then, that you don't know what the interests of the various partners were in this business? A. Yes.

Q. You do not know whether Sobler, whose name you now remember because I mentioned it to you, had a 50 per cent interest in this business, or less than a 50 per cent interest? A. I do not know.

Q. For all you knew then, or all you know

1798

Sylvia Greenspan—For People—Cross

now, he might have had a larger interest than everybody else in the business; is that correct?

Mr. Turkus: Objected to. Anything is possible, if you do not know.

The Court: Sustained.

Q. Mr. Sobler was there every day that you worked in this business, was he not? A. He may have been.

1799

Q. I beg your pardon? A. He may have been.

Q. Of course, as Mr. Turkus informs us, anything might have happened. Was he there every day that you were at that business? A. I don't recall.

Q. Was Mr. Bluestein there every day? A. No. Mr. Bluestein came and went.

Q. How frequently did you see Mr. Sobler at the place of business in the months that you worked in that business? A. I saw him a number of times. I could not tell you exactly how many.

1800

Q. It is a fact, is it not, that whether or not you know the degree or nature of his interest, he certainly had an interest in that business; is that right? A. Yes, but we took orders from my father.

Mr. Climenko: I move to strike out everything after the word "but".

Mr. Turkus: I ask that it stand.

The Court: Let it stand.

Mr. Climenko: Exception.

Q. He was a partner in that business?

Sylvia Greenspan—For People—Cross

1801

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Climenko: Exception.

Q. How many times in all did you see Sobler in the premises of that business? A. I answered that. I told you I saw him a number of times. I could not tell you exactly how many.

Q. When you were first interrogated by me this morning, you had no recollection whatsoever that Sobler had an interest in that business, is that so?

1802

Mr. Turkus: Objected to. Already answered.

The Court: Sustained. The question of partnership is always a question of law. There has to be competent proof on which the Court can decide whether or not a man is a partner or not. The most that we can say in regard to this witness's testimony is that it apparently appeared to her, as a conclusion she drew from what she saw and heard, that he probably was a partner. That does not establish partnership.

1803

Mr. Climenko: I was not interested in that, if I may say so, your Honor; I was interested only in her recollection.

Q. When did Martin Kelly enter into this business? I asked you that before. Do you remember? A. Yes, you asked me that before.

1804

Sylvia Greenspan—For People—Cross

but I could not tell you whether he went in immediately or he came in a little bit later.

Q. He may have come in after you posted the books?

Mr. Turkus: Objected to. It is already answered. She said he could have come in immediately or some time after.

The Court: Overruled.

1805

Q. Will you answer the question, please? A. He may.

The Court: Do you remember definitely?

The Witness: I don't remember definitely. I can't say definitely exactly when he came in.

Q. What was your father's business before his association with New York & New Jersey?

1806

A. I think he worked for the Garfield Express at that time.

Q. Before his association with New York & New Jersey? A. I think so. I am not sure.

Q. When do you think that was? A. I don't remember.

Q. You have no recollection of that? A. No.

Q. What was his business immediately before, immediately before his association with New York & New Jersey?

Mr. Turkus: I object to it. It has already been answered. The witness has

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1807

speculated. She said "I think". This is more speculation. It is objectionable.

The Court: Do you know?

The Witness: No, not exactly.

Q. Well, now, wasn't your father in business immediately before his association with New York & New Jersey, wasn't he in business with Kelly, or don't you know? A. He was in business with Kelly. I don't remember whether that was exactly preceding or not.

1808

The Court: Exactly what?

The Witness: Whether that preceded the business of the New York & New Jersey.

Q. How long did that business last? A. I don't remember.

Q. Did it last one month or four, do you know? A. No, I don't.

Q. Do you know whether that was a successful business? A. I don't know.

Q. You know nothing about that? Do you know as a fact that it was unsuccessful and that your father suggested that Mr. Kelly contribute his trucks to the existing corporation of New York & New Jersey Transportation Company? A. I said—

1809

8

Mr. Turkus: I object to it. The witness has just responded she does not know anything about it, she does not know if it was successful, so how could she possibly know that it was unsuccessful.

810

Sylvia Greenspan—For People—Cross

The Court: Were you the bookkeeper at that time?

The Witness: No.

The Court: You were just your father's daughter at that time?

The Witness: Yes, sir.

The Court: Sustained.

Mr. Climenko: Exception.

811

Q. Now don't you know as a fact that Kelly came into the business the same time that your father did? A. No, I don't.

Q. You don't know that? A. No.

Q. Do you know what Kelly's contribution to the business was? A. I don't know any of the contributions.

Q. You don't? A. No.

Q. Do you know when Kelly left the business? A. No.

Q. Did he leave while you were there? A. I don't remember.

812

Q. Well, you were there for at least six months, were you not? A. Yes, I was.

Q. Is that your recollection? A. Yes.

Q. Did Kelly leave before or after you left?

Mr. Turkus: Objected to.

A. I could not tell you that.

Q. You have no notion of that at all? A. No.

Q. Do you know whether Kelly's trucks were ever withdrawn from the vehicles of the New York & New Jersey Transportation Corporation at a time when you were connected with that corporation? A. I don't remember that.

Sylvia Greenspan—For People—Cross

1813

Q. You don't remember that? A. No.

Q. Did you receive a salary? A. Yes.

Q. Did you draw checks? A. Yes.

Q. Did you pay the other employees by drawing checks for them? A. Yes.

Q. You did? A. Yes.

Q. Were the employees paid regularly while you were there? A. For the first few months.

Q. Until what time? A. Until business started going bad.

Q. When would you say that business began starting going bad? A. After the meeting in the office that I spoke about.

1814

Q. Business was good until that time? A. Yes.

Q. What was the date of that meeting? A. I could not tell you the exact date.

Q. I beg your pardon? A. I could not tell you the exact date.

Q. Do you know what month it was in? A. No.

Q. Do you know that at the time that your father entered into this association with New York & New Jersey, New York & New Jersey was already in arrears in the payment of salaries to its employees? Did you know that? A. No, I didn't.

1815

Q. Did you ever hear of a man by the name of Abe Goldman? A. I don't remember him.

Q. Don't you know that Goldman was one of the truck drivers for New York & New Jersey? A. I don't remember.

Q. Have you no recollection of that? A. No.

Q. Didn't you draw the checks which were given to him in payment of his salary when he was paid? A. Yes, but I cannot remember all the names of nine years ago.

1816

Sylvia Greenspan—For People—Cross

Q. Did you tell me about ten minutes ago that you did remember the name of Goldman? A. I did not.

Q. You did not? A. No.

Q. Of course, you recall that meeting nine years ago, do you not? A. Yes, I do.

Q. You remember all of the details of that? A. Yes, I do.

Q. Correct? A. Yes.

1817

Q. Now at the time that your father first was connected with New York & New Jersey, were you told that New York & New Jersey could not pay the salary, the wages, of Goldman, one of its truck drivers? Were you told that?

Mr. Turkus: Just a minute. I object to it. Counsel has brought out when business started to go bad, after the meeting in this office. That has been answered.

The Court: The question can be re-framed. You will have to show who gave that information.

1818

Q. Did Goldman ever tell you that New York & New Jersey owed him seven hundred dollars in back salary from a time even before your father came in there? A. I told you I don't remember Goldman.

Q. So you do not remember whether such a demand was ever made on you for back salary? A. No.

Q. But you do not know that it did not happen, is that correct? A. I do not know anything about Goldman.

Q. It may have happened? A. I could not say.

Q. You do not know? A. No.

Sylvia Greenspan—For People—Cross

1819

Q. You say business was good before that meeting? A. Yes.

Q. Is that correct? You had charge of the books? A. Yes.

Q. What did the corporation own? A. What do you mean by what they owned?

Q. What were its assets? You said business was good. What did they have? A. They had a few trucks.

Q. Yes. A. And the manufacturers from whom they took the work.

1820

Q. All right. Who owned those trucks? A. The New York & New Jersey.

Q. The corporation? A. Yes.

Q. Did they own them outright? A. No.

Q. They owned them subject to chattel mortgages or conditional bills of sale, is that right? A. They bought new trucks during the time I was there.

Q. And they bought them on time? A. Yes.

Q. Is that correct? A. Yes.

Q. Where were those trucks stored? A. I don't remember.

1821

Q. Were they stored in New York or in New Jersey? A. I don't remember.

Q. You don't know even that? A. No.

Mr. Turkus: Just a minute. I ask that that question be stricken "You don't know even that". The implication—

The Court: Strike it out.

Q. Didn't you know that those trucks were stored at Pink's garage? A. No.

Q. In Passaic? A. No.

1822

Sylvia Greenspan—For People—Cross

Q. Did you pay garage rent for the garage of those trucks by check? A. Yes, I did.

Q. You don't recall the name of the payee? A. No.

Q. Is that correct? A. That is correct.

Q. Now did a time come when those trucks were withdrawn by the finance company? A. Yes.

Q. That did come? A. Yes.

1823

Q. Did a time come when Kelly withdrew his trucks or don't you remember that? A. I don't remember about his individual trucks but I do know that the finance company did take the trucks back.

Q. They did take those trucks back? A. Yes.

Q. After the finance company took those trucks back, did Sobler and Bluestein continue that business, do you know that? A. There was no business left. That is why the trucks—

Mr. Climenko: I move to strike out the answer.

1824

Mr. Turkus: I object to it and I ask the witness be permitted to continue with the rest of the answer.

The Court: Yes.

Mr. Climenko: I take exception. The answer is not responsive.

Mr. Turkus: (To reporter) Will you read to the witness the point to which she got?

(Answer read by the reporter.)

Mr. Turkus: Continue.

The Witness: That is why the trucks were taken back.

Sylvia Greenspan—For People—Cross

1825

Q. Were you there at that time? A. I was there until that time.

Q. When was that? A. I don't remember the exact month.

Q. You have no recollection of it whatsoever?
A. No.

Mr. Turkus: Objected to.

The Court: She did not say that.

Q. What did you say? Have you any recollection as to when it happened?

1826

Mr. Turkus: Objected to as just answered.

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the time the business started, did it have a bank account? A. Yes.

Q. How much money did it have in the account? A. I don't remember.

Q. Do you remember whether it had ten dollars or a thousand dollars? A. I could not tell you exactly.

1827

Q. You say that business was good?

Mr. Turkus: Objected to as argumentative.

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the end of the first week that you were there, how much did the corporation have in its bank account? A. I cannot answer that. I don't remember anything like that.

1828

Sylvia Greenspan--For People--Cross

Q. Well, do you remember whether it had a thousand dollars or less than a thousand dollars?

Mr. Turkus: Objected to.

The Court: Sustained. She said she did not know.

Mr. Climenko: Exception.

1829

Q. At the end of each week, did you draw a check to your father? A. Salaries were paid.

Q. Did you draw a salary check for your father? A. Yes.

Q. Do you recall how much that was? A. No.

Q. Do you remember whether it was \$25 more or less? A. I don't know.

Q. You do not know whether your father drew more or less than \$25 from this prosperous business?

Mr. Turkus: Object to the form of the question.

1830

The Court: You asked about salaries. Now you say how much did he draw. That is different. In a corporation, on account of income tax, it is customary, and I think we can take notice of it, for the officers to draw salaries and that is charged against the expenses of the business. The profits are over and above and the profits may be split.

Mr. Climenko: Has your Honor concluded?

The Court: I am just calling your at

Sylvia Greenspan—For People—Cross

1831

tention to the confusion between the two questions.

Mr. Climenko: Thank you, sir. I take exception to your Honor's remarks. I understand the spirit in which they were made.

Q. Let me ask you, Mrs. Greenspan, did your father have both a salary and some other account in the corporation? A. What do you mean by that?

1832

The Court: Do you know if there were any dividends paid?

The Witness: The business was not in existence long enough for dividends.

The Court: Just yes or no, do you remember?

The Witness: No.

Q. Your father did not draw any dividends?

Mr. Turkus: Just a minute. She said she did not remember, as I understand it.

1833

Mr. Climenko: I think you are wrong too, Mr. Turkus.

By the Court:

Q. Did you attend any stockholders' meetings? A. No.

Q. Did you attend any meetings of the board of directors? A. No.

Q. Did you prepare any minutes of the meetings of either directors or stockholders? A. No.

1834

Sylvia Greenspan—For People—Cross

By Mr. Climenke:

Q. Did your father draw any dividends? A. I don't know.

Q. Do you know what your father drew as his salary?

Mr. Turkus: Objected to as already answered.

The Court: Overruled.

1835

A. No, I don't.

Q. You have no idea at all, have you? A. No.

Q. Do you know that it was \$25 a week? A. I don't know.

Q. You do not know that? A. No.

Q. You do not know that that is not true?

Mr. Turkus: Objected to in that form. If she does not know if it was twenty-five she does not know if it is not twenty-five.

The Court: She says she does not know. Sustained.

1836

Q. Do you know whether he ever drew as much as \$30 a week as a salary from this business? A. I don't remember any figures on it.

Q. No, but you have a general impression as to what your father was drawing?

Mr. Turkus: Object to the form of the question.

Mr. Climenko: All right, I will withdraw it.

Sylvia Greenspan—For People—Cross

1837

Q. Do you have some general recollection as to what your father drew from the fact that you drew the checks of the corporation?

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Do you have any recollection now as to what your father's salary was?

1838

Mr. Turkus: Objected to.

The Court: She has answered it. Sustained.

Mr. Climenko: Exception.

Q. Did your father ever draw as much as \$30 a week as a salary from this business?

Mr. Turkus: Objected to.

The Court: Sustained as answered.

Mr. Climenko: Exception.

1839

Q. Did your father ever make a capital contribution, a contribution of money, to the assets of this business?

Mr. Turkus: Objected to as already answered on a number of occasions.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Did your father ever put any money into this business?

1840

Sylvia Greenspan—For People—Cross

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the time that you posted the books of this corporation, did you make any note as to any money put into the business by your father?

1841

Mr. Turkus: Objected to as already answered.

Mr. Climenko: A different question.

Mr. Turkus: It is the same thing.

The Court: Overruled.

By the Court:

Q. In these books that you opened, did you have capital account? A. No.

Q. Were they just the charges and credits? A. That is right.

Q. For trucking? A. That is right.

1842

Q. And did they also keep a record of the bank deposits? A. Yes. I made deposits, entered in the charges, moneys received, bills purchased and everything in regard to the bookkeeping end of it, but no capital account at all.

Q. The books were not as complete as that? A. No.

By Mr. Climenko:

Q. Did you make any note about your father putting any money into the business?

Mr. Turkus: Objected to.

A. No.

Q. You never did? A. No.

Mr. Turkus: I ask that the answers be stricken because she did not keep this kind of book. How could she make that kind of entries?

The Court: Yes, she said she only had a high school education. Apparently there was no business college.

1844

Mr. Climenko: I know, your Honor, but she was the only person, she was her father's daughter, who was keeping books of any contribution he might have made and I want to know if he made any.

The Court: The witness has given quite a few answers which light up that situation fairly. In small businesses, how many times are books kept according to the course of the New York University School of Commerce? Just usually a rather low grade of bookkeeping.

1845

Mr. Climenko: I know, your Honor.

The Court: In small businesses.

Mr. Climenko: My questions are pointed only as to her recollection. I take exception to your Honor's remarks only for that reason, that they don't touch on the point of my question.

Q. Don't you know that Kelly withdrew from this business because your father did not put into the business the money he was supposed

1846

Sylvia Greenspan—For People—Cross

to? Don't you know that that is a fact? A. No, I don't.

Q. Don't you know that your father had an agreement with Sobler and Bluestein that your father would put in a certain amount of money and that he never did that? Don't you know that? A. I had nothing to do with any agreement.

1847

Q. Don't you know that your father was supposed to put \$10,000 into the business, of which \$5,000 he was to put in in cash, and he could not do that? Don't you know that? A. No, I don't.

Q. Don't you know that Sobler and Bluestein said to him, "Even though you cannot put in any part of what you are supposed to put in, we will let you stay here, and if the business makes money, we will let you put your share in from profits"? Don't you know that that happened? A. No, I don't.

1848

Q. Don't you know that as a matter of fact the business never made any money and your father left the business because of that fact? Don't you know that? A. No, I don't.

Q. You do not know that? A. No.

Q. Don't you know as a matter of fact that he asked for and obtained a job at a much higher salary than any salary he had ever got from New York and New Jersey? A. That is not so.

Q. Don't you know that? A. No, that is not so.

Q. You lived—

Mr. Turkus: Don't shut off the answer. What was the answer?

The Witness: I say that is not so because the business was progressing.

Sylvia Greenspan—For People—Cross

1849

Q. Because what? A. Because the business was progressing.

Mr. Climenko: I move to strike that out.

Mr. Turkus: I move that it stand.

The Court: Let it stand.

Mr. Climeako: Exception.

Q. If the business progressed, as you say, was its bank account larger one month after you had opened the books than three weeks before that time?

1850

r. Turkus: Objected to. That is not an indication of whether a business is progressing.

Mr. Climenko: That is one indication.

The Court: Sustained.

Mr. Climenko: Exception.

Q. How much money did the business have on deposit the first week after you opened the books?

1851

Mr. Turkus: Objected to as already answered.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Did it have a larger sum of money on deposit three weeks later?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Climenko: Exception.

1852

Sylvia Greenspan—For People—Cross

Q. How much money did the business have on deposit two months after you started work for the business?

Mr. Turkus: Objected to as already answered.

The Court: Overruled.

A. I don't remember.

Q. You have no recollection of that at all? A. No.

1853

By the Court:

Q. Do you remember how large a bank balance there was at any time when you were there? A. Your Honor, I cannot answer that because they kept investing money in new trucks. If they did make money, they invested it.

Q. How much was left in the bank from day to day? A. I cannot remember that.

Q. A thousand, two thousand? A. I cannot remember the exact figure.

1854

By Mr. Climenko:

Q. Do you remember if anything was left in the bank from day to day? A. There must have been something left. Bills had to be met.

Mr. Climenko: I move to strike that out.

By the Court:

Q. What bank was the account in? A. I don't know.

Q. You don't remember? A. I don't remember that, no.

Q. Some banks require minimum average bank balances, but others make a charge for bank balances under a certain amount. Others don't care how large the bank balance is, but carry the account anyway. That is why I asked what bank, if you can remember, the account was in. A. I don't remember.

By Mr. Climenko:

1856

Q. You say you do not remember the names of the banks where the accounts were kept? A. That is right.

Q. Suppose that you take a look at Defendants' Exhibit E for identification and tell me whether after looking at that your recollection is refreshed as to the name of the bank. Does that refresh your recollection? A. No. To the best of my recollection it was a New York bank.

Q. It was a New York bank? A. Yes.

Q. Do you recognize your father's signature on that photostatic copy of a check?

1857

The Court: What bank is that?

Mr. Climenko: A Passaic bank, your Honor.

A. I believe that is his signature.

Q. You believe that is his signature? A. Yes.

Mr. Climenko: May I have it?

The Court: Let me see it. Is this an exhibit?

1858

Sylvia Greenspan—For People—Cross

Mr. Turkus: No, that is only marked for identification.

Q. You recall the other signature that is on this check, N. Sobler? A. Yes.

Q. Is that the man whose identity you could not remember this morning? Is that right? A. Yes.

Q. Did you ever make deposits for this corporation? A. Yes, I did.

1859

Q. Where? A. I don't remember the bank. It was a New York bank.

Q. Are you the only person who made the deposits?

Mr. Turkus: Objected to. That is something she could not tell.

Q. So far as you know, was anybody else requested to make deposits for this corporation?

1860

Mr. Turkus: Objected to. If there are four partners or less partners, anybody can make deposits. How would she know? Speculative. Objectionable.

The Court: It seems to have been assumed that this was a corporation, and of course it is still an open question whether it was a corporation or a partnership. There is no legal proof on either point. Overruled.

Mr. Climenko: If your Honor will take another look at that exhibit which was just handed to you, you will get some indication.

The Court: Yes, but it is not proof.

Mr. Climenko: I don't submit it as such.

The Court: Furthermore, it is not in evidence.

Mr. Climenko: I am reminded, your Honor, that the son testified yesterday that he attended a meeting in a lawyer's office in connection with the corporation.

Mr. Turkus: That is certainly proof of a corporation.

The Court: I recall that now.

Mr. Climenko: It is not proof of anything, and I said it, if your Honor please, not to produce a sarcastic rejoinder from my adversary, but only in support of the request made by your Honor.

The Court: There has to be a certain amount of that.

Mr. Climenko: I do not know why there need be any.

The Court: Go ahead.

By Mr. Climenko:

Q. Were you the only person, so far as you know, who made deposits in the bank for the corporation?

Mr. Turkus: I object to it.

The Court: I did not hear the question.

Mr. Climenko: Your Honor, I asked her if, so far as she knew, she was the only person who made deposits in the bank for the corporation.

Mr. Turkus: Objection withdrawn.

1864 *Sylvia Greenspan—For People—Cross*

The Court: Do you know of anybody else who made deposits?

The Witness: Yes.

Q. Who else? A. Anyone that collected a very large check after I had made a morning deposit would deposit it.

Q. I see. But it was your habit to make a morning deposit? A. Yes.

Q. Is that right? A. Yes.

1865 Q. So that you made the deposit at least once a day during business days? A. Yes.

Q. Where did you go to make those deposits?

Mr. Turkus: Objected to as already answered.

Mr. Climenko: That question has never been asked.

Mr. Turkus: It has been asked three times.

The Court: Overruled. She has said that she went to a New York bank; she does not recall what bank. Do you recall the street the bank was on?

1866 The Witness: I think it was on Broadway.

The Court: Near where?

The Witness: I don't know.

Q. Do you know the name of that bank that you went to at least once every day? A. No, I don't.

Q. You have no recollection of that whatsoever? A. No.

Q. Can you think about it, see whether your memory will be refreshed on that point? A. I

Sylvia Greenspan—For People—Cross

1867

could not tell you. I have been in so many banks since.

Q. But you worked for this business for at least six months, did you not?

Mr. Turkus: Objected to as already answered.

Q. Is that right? A. That is right.

Q. And each day of those six months you went to that particular bank?

1868

Mr. Turkus: I object to it as already answered. The witness has said she has gone to many banks since. It is nine years ago.

The Court: She did not say each^{and} every day. Were there any days that you skipped, had no money to deposit?

The Witness: There might have been.

Q. I am asking you, with that recollection that you made the daily bank deposit yourself, will you make an effort as you sit here now to think of the name of the bank?

1869

Mr. Turkus: I object to it.

The Court: She has answered it. Sustained.

Mr. Climenko: Exception.

Q. Did you at one time live in Passaic, New Jersey? A. Yes.

Q. And do you remember what years those were? A. I lived there twice.

1870

Sylvia Greenspan—For People—Cross

Q. Yes, when was the first time that you lived there? A. That was about eighteen years ago.

Q. Do you know whom your father was working for at that time? A. Yes.

Q. Whom? A. Louis Cooper.

Q. And under what name was he conducting his business at that time, do you know? A. Garfield Express.

Q. Was he your father's only boss then?

1871

Mr. Turkus: Objected to. How in the world could this witness know that?

Mr. Climenko: If she does not, she will say so, Mr. Turkus.

The Court: It is a conclusion. Sustained.

Q. Do you know whether anybody had an interest in Garfield with Mr. Louis Cooper at that time, eighteen years ago, when so far as you recall your father was working for Garfield?

1872

The Court: There is no evidence here, Counsellor, that she herself worked for the Garfield Express.

Mr. Climenko: I don't make any such claim, your Honor.

The Court: So anything that she would have in the way of information would be information in the home.

Mr. Climenko: Right.

The Court: Not in the place of business. She would not know who bossed her father.

Mr. Climenko: I understand, but she lived there. I just want to know whether

Sylvia Greer span--For People--Cross

1873

she was then acquainted with a certain person.

The Court: You can ask that.

Q. Did you then know Mr. Bluestein, in those years? A. Morris Bluestein?

Q. Yes. A. Yes, I knew him.

Q. And didn't he then have an interest with Louis Cooper in Garfield Express?

Mr. Turkus: Objected to. Eighteen years ago this witness obviously was a child.

1874

Mr. Climenko: You have been explaining matters in this court-room for two days now as to what happened nine years ago.

Mr. Turkus: Yes. She will never forget that.

Mr. Climenko: They have nothing to do with this case.

Mr. Turkus: That is what you think.

Mr. Cuff: Judge, I object to the District Attorney making statements in connection with any objection. If he makes an objection, he should make it in a legal fashion and not a speech.

1875

Mr. Turkus: Will the Court instruct associate counsel and Mr. Cuff to be civil?

The Court: This acts as an inhibition on the part of the Court when it tries to think. Do I understand she is being questioned now as to something that happened eighteen years ago? Is that accurate?

1876

Sylvia Greenspan—For People—Cross

Mr. Climenko: I beg pardon, your Honor. I first want to know whether eighteen year ago she was acquainted with Bluestein, that is all.

The Court: (to witness) How old are you now, if you do not mind telling us?

The Witness: Twenty-eight.

The Court: When you were ten years old, do you know if he was associated with Bluestein?

1877

The Witness: I know Bluestein, but I do not know anything about the business of the Garfield Express.

Q. You do not know whether he had an interest in Garfield Express? A. No, I do not.

Q. How long ago eighteen years ago did your father remain in the employ of Garfield? A. I don't remember.

Q. You have no recollection?

1878

The Court: At that age were you in primary school?

The Witness: Yes.

Q. Then did your father start work for Garfield again in 1933? A. He went to work again. I do not know exactly when.

Q. Did he go to work for Louis Cooper and Garfield? A. Yes.

Q. In 1932? A. I do not know exactly when.

Q. Do you know how long he remained in their employ? A. I don't remember.

Q. I beg your pardon? A. I don't know.

Q. You do not know whether it was six months or two years? A. No, I don't.

Q. You do not know what his salary was?

A. I never knew what my father's salary was.

Q. You never knew what it was even in New York and New Jersey; is that correct? A. I did at that time because I made out the checks.

Q. But you have no recollection of it now?

A. No.

Q. Do you say that on a particular occasion you went to a place where you saw, among other people, a Mr. Shapiro? A. Yes.

Q. And that he looked at certain books that you had brought with you? A. Yes.

Q. And he read those books? A. Yes.

Q. And he read names from them? A. Yes.

Q. Are you sure that he was the person who did that? A. Yes.

Q. At that time was part of the business of New York and New Jersey in connection with houses in Pennsylvania, do you know? A. Yes.

Q. Yes? A. Yes.

Q. Were those non-union shops? A. I don't know.

Q. Do you know whether they were union or non-union? A. No, I don't.

Q. You never knew anything about them? A. No.

Q. Was the subject of whether they were union or non-union discussed on the occasion when you were at that particular place? Yes or no? A. I cannot answer that yes or no.

Q. You don't know? A. I don't know.

Q. You were there listening to this conversation? A. Yes.

Q. Is that right? A. That is right.

Q. You say that those books were not returned

1882

Sylvia Greenspan—For People—Cross

to you after you left that place? A. I didn't bring them back.

Q. You did not bring them back? A. That is right.

Q. Were they returned at the office of New York and New Jersey at any other time? A. Yes.

Q. When? A. I don't remember.

1883

Q. Well, was it more than a day or two days, do you know? A. My father may have brought them back. I do not remember exactly.

Q. May he have brought them back on that same day? A. He may.

Q. Yes? A. I said, "He may."

Q. How long did your father continue his association with New York and New Jersey after the date of that meeting, whenever it may have been? A. About two or three months.

Q. Did you remain in New York and New Jersey for that same period of time? A. I remained until the time when it was evident that there was no more business left.

1884

Mr. Climenko: I move to strike the answer out.

Mr. Turkus: I move that it stand. That is the way the witness fixes her recollection.

The Court: Let it stand.

Mr. Climenko: Exception.

Q. Did you testify before the Grand Jury in this case? A. Yes, I did.

Q. When? A. After the murder of my father.

Q. Will you give me a date, please? A. I cannot give you a date.

Q. Do you remember what year it occurred in? A. Yes, 1936.

Q. Did you testify at any time after 1936?

A. No, not until the time I saw Mr. Turkus and Mr. Klein.

Q. Did you testify before a Grand Jury after you saw Mr. Turkus and Mr. Klein? A. No.

Q. So that the only time that you testified before a Grand Jury was in 1936? A. Yes.

Mr. Climenko: I respectfully request Mr. Turkus, through the Court, to submit to the Court—

Mr. Turkus: You can have the minutes.

Mr. Climenko: —a transcript of the Grand Jury testimony of this witness for inspection, pursuant to the same request made yesterday.

Mr. Turkus: I hand to your Honor the exhibit that you received yesterday, People's Exhibit F. The index indicates where that testimony is.

The Court: The Court proceeds to read the minutes.

Mr. Turkus: May I say this: I offer the Grand Jury minutes in evidence of this witness.

Mr. Climenko: If your Honor pleases, I ask your Honor—

The Court: The Court is trying to read the minutes. Make your motions later.

The Court having completed the reading

1888

Sylvia Greenspan—For People—Cross

of minutes of testimony before the Grand Jury of this county by Sylvia Rosen, under date October 16, 1936, finds that apparently there are no contradictions therein with any of the testimony given here, but there are certain amplifications which the Court is prepared to call attention to if counsel for defense wishes. There is also supplemental testimony covering a point not brought out here, concerning an alleged meeting in a candy store several years later, what was said there and who was present. The Court cannot go into that. That is a matter for the District Attorney. And also an alleged communication sent by this witness to someone else concerning the latter alleged meeting.

1889

Mr. Barshay: We enter an objection to the Court's saying to this jury and for the record what was in the Grand Jury minutes.

1890

The Court: The Court has not revealed anything prejudicial.

Mr. Barshay: I know that. I did not say you revealed anything.

The Court: The Court will be very glad, so far as the amplifications of testimony concerning the subject-matter of the witness's testimony here today are concerned, to reveal them if counsel for defense wishes.

Mr. Barshay: We would like to have it.

The Court: Very well. I will put it in the form of questions.

Mr. Barshay: I do not want any bundle of Grand Jury minutes.

(To Mr. Turkus) You stop those side remarks audible to the jury. You know better.

Mr. Turkus: I am offering them in evidence.

Mr. Barshay: You know they have no right in evidence. A law student knows it. You ought to know it.

Mr. Turkus: Thank you for the compliment.

1892

The Court: The Court sustains objection to the Grand Jury minutes going into evidence.

In the conversation in this place of business on what you have described as 17th or 19th Street off of Broadway, do you recall if anything was said in relation to your father's trucks running into Pennsylvania?

Mr. Climenko: If your Honor pleases, I object to that question, not binding on the defendants. The issue is remote in the matter before the Court.

1893

The Court: This is the amplification. It is more specific than what the witness said here.

Mr. Climenko: If your Honor pleases, I lodge my objection to your Honor's question in connection with our application. That was an application to permit us, if I may say so ever so respectfully, your Honor, to look at those minutes in the assistance of our cross-examination.

1894

Sylvia Greenspan—For People—Cross

The Court: You cannot do it unless the Court finds contradictions.

Mr. Climenko: I respectfully except to your Honor's remark. I press my objection to your Honor's question.

The Court: It is not a remark. The Court was requested by counsel for defense to go into this. Now you get up and object.

1895

Mr. Climenko: No, if your Honor pleases, we have been misconstrued. We did not ask your Honor—

Mr. Barshay: Your Honor, within the principles of the law—

The Court: The Court would like to know what is what.

Mr. Barshay: I would like to see the Grand Jury minutes or that part thereof, with the Court's permission, which shows any inconsistency with respect to this witness's testimony. That is all I want.

1896

The Court: The Court finds none. That is the third time I said it, and I shall not be involved in any wrangle with counsel causing the Court to make repetitions of statements.

Mr. Barshay: I will abide by your Honor's ruling. This is the first time, unfortunately, that I have heard it.

The Court: If you do not want the Court to ask questions concerning the supplemental matters, the amplifications, I should say—

Mr. Barshay: I do not want the Court to ask any questions contained therein un-

less they show inconsistencies with her present testimony.

The Court: There are no inconsistencies.

Mr. Barshay: Now may I ask the Court whether or not there is any mention of this meeting at the so-called Broadway address, or whatever the address was, in the Grand Jury minutes?

The Court: There is.

Mr. Barshay: That is what I would like to see.

1898

The Court: That is precisely what I am asking about.

Mr. Barshay: I would like to see them, sir.

The Court: I know you would, and you will not, because that is covered by the Court's ruling, to which you have exception.

Mr. Barshay: Then I take an exception, that's all.

The Court: Now you have got a lot of exceptions. We will call it a day on that.

1899

Mr. Climenko: May we have those minutes marked for identification?

Mr. Turkus: They were marked yesterday.

The Court: They are court records.

Mr. Turkus: They bear Exhibit—Defendants' Exhibit F.

Mr. Climenko: What part of F is made up by her examination?

Mr. Turkus: The index is on the outside.

The Court: The Court has put pencil

1900

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marks against each one of the points of amplification. They concern the Pennsylvania business and also as to who was the alleged owner of the place of business where the alleged meeting occurred.

Mr. Climenko: Now, if your Honor pleases, for the record, we respectfully request that that portion of Exhibit F for identification which is made up of a transcript of this witness's testimony before the Grand Jury, be separately marked as an exhibit for identification only.

1901

Mr. Turkus: The whole thing is marked as Exhibit F. It was marked yesterday.

Mr. Climenko: I made myself very clear to your Honor. My application is merely that portion which is a transcript of her testimony be separately marked as a separate exhibit for identification, merely for the clarification of the record.

The Court: The Court should not be obliged to repeat. You have the ruling.

1902

Mr. Climenko: Exception.

By Mr. Climenko:

Q. Did you make a statement to anybody in the District Attorney's office in 1936? A. What kind of a statement?

Q. Did you sign a paper? A. I don't remember if I signed a paper.

Q. Did you speak to someone who made a report of what you said, either in writing or in typing? A. Yes.

Q. Which you thereafter signed? Is that

right? Did you do such a thing? A. You are adding something that I don't remember.

Q. What is it that you do remember? A. I made a statement. Whether that statement was signed at that time or not, I don't remember.

Q. Do you remember the person to whom you made the statement? A. Yes.

Q. What was his name? A. Assistant District Attorney McCarthy, I believe.

Mr. Climenko: I respectfully request the Assistant District Attorney to submit to your Honor the statement referred to by the witness. I make the same request as to that statement heretofore made as to the Grand Jury minutes.

1904

Mr. Turkus: I tender to the Court the same exhibit as was marked yesterday Defendants' Exhibit G. The index indicates the statement of this witness.

The Court: You mean G for identification?

Mr. Turkus: G for identification.

The Court: The Court proceeds to read.

1905

The Court has read the statement and finds nothing in it concerning the alleged meeting and production of books. Nothing was asked and nothing answered concerning that meeting. Questions and answers relate to something that is alleged to have happened in the candy store in 1936 and to writing of a letter.

Mr. Climenko: If your Honor pleases,

1906

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we make a request to your Honor for those papers.

The Court: There is nothing contradictory.

Mr. Climenko: In order to assist us in our cross-examination—

The Court: Please. There is nothing contradictory of any of the testimony given here today.

1907

Mr. Climenko: As to that, I merely have two things to say: One was we did not request a description of it from your Honor, but we did request an opportunity to look at it to determine for ourselves whether the matter would be of assistance to us in our cross-examination.

The Court: So there will be no confusion on the part of people who are listening in at the trial as well as the jurors, the purpose of the Court's reading this, as you know perfectly well, is to see if there is any basis for your application. There Court finds there is no legal basis under the authorities for your application and denies it.

1908

Mr. Climenko: Exception. May we have it on the record as to the date of the statement given?

The Court: Yes.

Mr. Climenko: Which is referred to by your Honor?

Mr. Turkus: People's Exhibit F, Grand Jury testimony, was given October 16, 1936.

Sylvia Greenspan—For People—Cross

1909

The Court: Give me back the statement.

Mr. Turkus: Defendants' Exhibit G for identification—

The Court: The date?

Mr. Turkus: I was just looking at it.

The Court: October 5, 1936.

Mr. Climenko: Is that the date of the statement? May we have the date of the record of the testimony before the Grand Jury?

1910

Mr. Turkus: I did place it on the record—October 16, 1936. That is just exactly a month after the murder. ■

Q. Did you make any other statement at any other time to anybody else in the District Attorney's office? A. Not until recently, when Mr. Turkus called upon me.

Q. When was that? A. A few months ago.

Q. So that from October 16, 1936, to a few months ago, 1941, you did not communicate with anybody connected with the office of the District Attorney in relation to this matter?

1911

Mr. Turkus: Objected to—pointless.

Mr. Climenko: I do not know whether he has to pass on whether it is pointless, your Honor.

The Court: Overruled.

A. No, I did not.

Q. And you did not testify before any Grand Jury in 1940 or in 1941; is that correct? A. Yes.

1912

Sylvia Greenspan—For People—Cross

Q. Now, referring to this meeting which you say took place sometime in 1932, did you go to this particular place alone? A. Yes.

Q. Had you been given an address before you went there? A. On the telephone.

Q. I beg your pardon? A. On the telephone.

Q. Had you ever been to that particular office before? A. No.

Q. Did you go there at the request of your father? A. Yes.

1913

Q. When you went there did you find your father in that room? A. Yes.

Q. He was already engaged in a discussion? A. Yes.

Q. Did you hear an argument between your father and other people who were there? A. Yes.

Q. Is that correct? A. Yes.

Q. And this argument proceeded in your presence; is that right? A. Well, it stopped momentarily when I walked in.

1914

Q. When you walked in, it stopped momentarily? And then it was resumed, if it stopped only momentarily? A. Yes.

Q. Is that right? A. Yes.

Q. You walked in, and you were then how old? A. About nineteen.

Q. And you walked into this room, the argument stopped momentarily, and then it started over again? A. Yes.

Q. And it was a heated discussion; is that right? A. That is right.

Q. Did anybody ask you to leave the room while this argument was going on? A. No, not until the time I told my father—

Q. Pardon me.

Mr. Turkus: Just a minute. The witness has been foreclosed in answering.

Mr. Climenko: Nobody is foreclosing anybody and you know that.

Mr. Turkus: I have an application before the Court to permit the answer to be continued.

Mr. Climenko: If your Honor pleases, the objection was interposed at a point, only at a point, when Mr. Turkus knows she was reporting hearsay matter not responsive to the question.

1916

The Court: I would like to hear the answer before I can entertain a motion to strike out any part of it. Finish the answer.

The Witness: He asked me if anybody asked me—

Mr. Climenko: I take exception to your Honor's ruling.

Mr. Cuff: Let us have the answer read, Judge, and the question.

(Question and answer read by the reporter).

1917

Mr. Climenko: If your Honor pleases, I object to that question.

Mr. Turkus: That is your question.

Mr. Climenko: I object to that portion of the answer which is obviously hearsay.

The Court: Are you repeating all of this? That is all behind us.

Mr. Turkus: I want the witness to continue the rest of the answer.

The Court: This simply interrupts and prevents the witness from having a trend

1918

Sylvia Greenspan—For People—Cross

of thought. The Court is going to hear the rest of that answer in order to rule. There will be no further interruption.

(The answer was again read by the reporter).

The Witness: —that he was getting too excited and to leave with me.

The Court: Then were you told to leave?

The Witness: Then my father told me to leave.

1919

By Mr. Climenko:

Q. So that none of the other people in that room asked you to leave? A. No.

Q. Mr. Fields did not ask you to leave? A. No, nobody.

Q. Mr. Shapiro did not ask you?

Mr. Turkus: Objected to as already answered that no one except her father.

The Court: Sustained.

1920

Mr. Climenko: Exception.

Q. That finished their conversation with your father in your presence? A. Yes.

Q. How long were you there altogether? A. About twenty minutes.

Q. Did you take part in the conversation? A. No.

Q. At any point? A. No.

Q. Had you ever seen Mr. Max Rubin before that day? A. I answered that, yes.

Q. You had? How many times? A. A number of times.

Q. At your place of business? A. Yes, and also around the garment district.

Q. Do you know what his job was at that time? A. From hearsay, I understood he was a delegate.

Q. Did you know of your own knowledge? Did you know of your own knowledge what his business was? A. How could I know of my own knowledge?

Q. Did he ever tell you? A. No.

Q. Had you ever been to this particular office before? A. No. 1922

Q. Did it have a name on it? A. It did.

Q. Do you recall what the name was? Yes or no. A. No.

The Court: What office was that?

Mr. Climenko: The office where this alleged meeting took place, your Honor.

The Court: Why don't you ask her the name of the business?

Mr. Climenko: I beg your pardon?

The Court: Whose place of business was it? 1923

The Witness: I understood it was—

Mr. Climenko: Now—

The Witness: I cannot answer it any other way.

Mr. Climenko: If your Honor pleases, my objection is only to anything which, from the preface of the answer, is obviously incompetent.

The Court: What she understood may be hearsay. Did you see any name on it?

The Witness: Yes, I did.

The Court: What was it?

1924

Sylvia Greenspan—For People—Cross

The Witness: It was some canvas company but I don't remember the full name.

The Court: Did any one of the group of the men who were in the place of business then other than your father tell you whose business it was?

The Witness: Nobody spoke to me while I was there.

Q. You do not remember the name, do you?

1925

A. No, I don't.

Q. And you had never been there before?

A. No.

Q. Don't you know that Mr. Shapiro could not read or write? A. I do not know anything about Mr. Shapiro.

Q. You said that Shapiro read from a book, one of your books? A. You asked me I knew whether he could read or write. I said I do not know anything about him.

Q. I said to you, don't you know as a matter of fact that he cannot read or write? A. No, I do not.

1926

Mr. Turkus: I object to it as answered.

The Court: Sustained.

Q. Don't you know that Mr. Shapiro could not read or write? A. No.

Q. Did you see him read on that occasion from your book?

Mr. Turkus: Objected to. That is something you cannot tell.

The Court: All you can judge is by appearance.

Mr. Turkus: There was somebody in back of him, too.

Q. Did you see him read from that book on that day?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Did you say before that Shapiro read from a book? A. I said he opened the book and looked at it.

Q. Did you say this morning, when Mr. Turkus was asking you questions, that Mr. Shapiro read from a book and that book you described as a ledger with accounts receivable?

The Court: That is what she stated.

Mr. Climenko: That is what she said.

Q. Did you say that this morning? A. Yes.

Q. Don't you know that Mr. Shapiro cannot read from a book? A. No, I don't.

Q. Do I understand you to say now that he did read from that book?

Mr. Turkus: Object to it.

A. To make myself clear—

Q. No.

The Court: Let her answer.

1930

Sylvia Greenspan—For People—Cross

Q. Did you say that this morning?

The Court: Let her answer. (To witness) Finish your answer.

The Witness: He opened the book and looked at it and manufacturers' names were called out.

The Court: By him?

The Witness: By him. Now whether they were mentioned to him or not, I don't know.

1931

Q. So that you do not know whether he was reading that book? A. Of course I don't know.

Q. Where was Mr. Buchalter standing? A. Right in back of him.

Q. Was he looking over Mr. Shapiro's shoulder? A. Yes, he was.

Q. Did you see Mr. Buchalter's lips move? A. Yes. I said that he had held whispered consultations with him.

Q. So you want me to understand that it was Mr. Buchalter that was reading?

1932

Mr. Turkus: Just a minute.

A. I do not know.

Mr. Turkus: I want the word stricken from the question.

The Court: Strike it out.

Q. Who was reading these names?

Mr. Turkus: Objected to. The witness

has already testified in detail. Now the jury draws the conclusion what went on.

The Court: The jury can figure it out.

Mr. Climenko: Did your Honor rule?

The Court: Yes. We will have to take a recess for this reason. There is a large accumulation of sentences. For practical reasons that must interrupt this trial. These sentences cannot be delayed until the end of the trial. There are too many people in the jail. The sentence calendar has been made up for this afternoon at two o'clock of part of these cases. That will be the work of the afternoon. We will take a recess now until tomorrow morning at ten o'clock.

1934

Gentlemen of the jury, please do not discuss the case, let nobody talk to you about it, keep your minds open. Remember the other admonitions that you heretofore received.

The jury will pass out.

Defendants are remanded.

1935

(Whereupon an adjournment was taken to Friday, October 24, 1941, at ten a.m.)

1936

Sylvia Greenspan—For People—Cross

Brooklyn, N. Y., October 24, 1941.

TRIAL RESUMED

SYLVIA GREENSPAN, a witness for the People, resumed the stand and testified further as follows:

Cross-examination by Mr. Climenko (continued):

1937

Q. When you left here yesterday where did you go? A. I went to my place of business.

Q. Did you at any time since you left the stand yesterday discuss your testimony with anyone connected with the District Attorney's office? A. No, sir.

Q. Will you tell me, when was the last time you saw Max Rubin? A. You mean to speak to?

Q. When was the last time you saw him?

Mr. Turkus: I object unless counsel makes it clear to the witness what he refers to.

1938

The Court: The language could not be clearer. When you saw him, not to speak to necessarily.

A. I saw him about four months ago.

Q. How long ago? A. About four months ago.

Q. Where? A. On the Boardwalk in Coney Island.

Q. Did you talk to him on that occasion? A. No, sir.

Q. When was the last time before that you had seen him? A. I saw him once before; the last time before that, in the store my father owned.

Q. Did you ever discuss with Max Rubin the subject-matter of your testimony here? A. No.

Q. You are certain of that? A. Yes, sir. When could I? I have not seen him since.

Q. You did not discuss your testimony of yesterday with anybody since you left the stand yesterday? A. No, sir, except with my husband.

Q. But not with your mother? A. I have not seen my mother.

Q. In 1931 were you living with your family? A. Yes, sir.

1940

Q. In Brooklyn or in Passaic? A. In Brooklyn.

Q. Was your brother Harold living with you at that time? A. I believe my brother was married at that time—no, he was not married then.

Q. In 1931 your brother was married? A. Well, no, my brother was living in 1931—he went to school.

Q. Was he attending school in 1931? A. Yes, sir, I believe he was.

Q. Did he go to school in September of 1931?

A. I believe he did.

1941

Q. What was the name of the school? A. He went to Albright College.

Q. When did he return from Albright College?

A. What do you mean, when did he return? You mean when did he graduate?

Q. When did he come home from Albright College? A. He came home at the end of the semester, in the summer.

Q. That would be sometime in June, 1932? A. There was a year interval there he did not go to school.

Q. In 1931 did he go to college? A. I could

1942

Sylvia Greenspan—For People—Cross

not tell you exactly what year he missed up on; there was one year he was out of school; I do not remember whether it was 1931 or 1932.

Q. So you do not know whether or not your brother was at Albright College in the year from September, 1931, to June, 1932?

Mr. Turkus: I object to that as having been already answered.

The Court: Objection sustained.

1943

Mr. Climenko: Exception.

Q. Was your brother a student at Albright College in the year beginning September, 1931?

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Climenko: Exception.

Q. Where was your brother in September of 1931?

1944

Mr. Turkus: Objected to as already answered.

The Court: Sustained as repetitious.

Mr. Climenko: Exception.

Q. Did your brother live with your family in September of 1931?

Mr. Turkus: I object to that as repetitions.

The Court: He could live there and still be at school, or he could be a roomer some place else.

The Witness: If he went to school that year he would not be living at home; he would be in Pennsylvania. And if that is the year he missed, he was at home with us.

Q. Did he go to school that year? A. I said I do not remember whether that is the year he missed or not.

Q. Did he go to school or college in the year beginning September, 1930, to the end of June, 1931?

1946

Mr. Turkus: I object.

The Court: She can say if she remembers.

A. Yes, in 1930 I believe he was in school.

Q. Where is Albright College? A. In Reading, Pennsylvania.

Q. Now, where was the office of the New York and New Jersey Transportation Company? A. On Washington Place off 8th Street—off Broadway.

1947

Q. What is the distance between Washington Place and 8th Street? A. You mean how many blocks?

Q. Yes. A. They are very close together; there may be one or two blocks difference.

Q. Do you know the distance? A. No, sir, I do not.

Q. During the time you worked at the New York and New Jersey, at its office, did that company ever move its office? A. No, sir.

Q. So during the period you worked there it had only the one office? A. Yes, sir.

1948

Sylvia Greenspan—For People—Cross

Q. You do not remember whether that office was located at Washington Place earlier? A. No, sir.

Q. You have no recollection of that whatever? A. I know it was on either one or the other.

Q. But you do not remember which one it was? A. That is right.

Q. And that is the office you went to daily for a period of about six months; is that correct? A. Yes, sir.

1949

Q. Now, when did you open the books for that corporation?

Mr. Turkus: Objected to as repetitions; we went over that yesterday.

Mr. Climenko: No, not that question.

The Court: I do not recall whether it was in direct or cross.

Q. Do you remember when you opened the books? A. Yes, sir, I answered that yesterday; I said I believed it was in March or April.

1950

Q. Of what year? A. 1932.

Q. Was your brother living, physically, with your family at that time? A. Yes, sir, he was home.

Q. He was at home? A. Yes, sir.

Q. Did your brother work for the New York and New Jersey Transportation Company? A. Yes, sir.

Q. For how long? A. For about three or four months.

Q. Now, during that time you worked for the New York and New Jersey Transportation Company? A. No, sir.

Q. Did your brother receive a salary when he worked there? A. Yes.

Q. Do you know that of your own knowledge? A. Yes.

Q. You do? A. Yes, sir.

Q. Did you receive a salary when you worked there? A. Yes, sir.

Q. What was your salary? A. I do not remember.

Q. Have you no recollection of what you were paid? A. To the best of my recollection when I started to work there I drew \$15 a week.

1952

Q. How long did you continue to draw \$15 a week as your salary? A. Well, I believe there was one time there when my father told me to take more, but I refused it.

Q. How long did you continue to draw \$15 a week as your salary? A. As long as I was there.

Q. You never spent a week there when you were working there, when you did not receive at least \$15 a week; is that correct? A. That is correct.

Q. Were you paid by cash or by check? A. Both.

1953

Q. Did you draw the checks? A. Yes, sir.

Q. Don't you know, as a matter of fact, that you never received \$15 a week as your salary?

A. No, sir, I do not.

Q. Don't you know as a matter of fact that this concern could not afford to pay you a regular salary and did not pay you any regular salary? A. That is not true.

Q. Don't you know as a matter of fact, you worked there on a part time basis and took what-

1954

Sylvia Greenspan—For People—Cross

ever they offered you, and that was usually \$5 or \$6 a week? A. No, sir, that is not so.

Q. You do not recall that? A. I was not on part time.

Q. Your connection with this firm was to open the books, and that is all you did, and you left your brother working there? A. Yes, sir.

Q. So, while he was working there you were not there? A. That is right.

1955

Q. You had nothing to do with the books from the time he was working there? A. Yes, sir.

Q. You do not know anything about the financial condition of the company during that period he was there? A. That is correct.

Q. He was there for at least six months; is that correct? A. I did not say that.

Q. What did you say? A. I said he was there for about three or four months.

Q. When did he start work there? A. When the firm opened, during March or April of 1932.

Q. About four months after April would be the beginning of July, isn't that correct? A. Yes, sir, that is right.

1956

Q. So you came back to work there sometime in July of 1932? A. That is right.

Q. Now, when, after you started working, did this meeting take place you referred to yesterday—how much later after you began to work there?

Mr. Turkus: I object. There were two meetings.

Q. Did you say you received a telephone call from your father sometime and then you went somewhere? A. Yes, sir.

Q. What was the address of the place to which you went? A. I don't know; I said on 17th or 19th Street, off Broadway.

Q. You are sure it was either 17th or 19th Street? A. It could be 18th—it was somewhere in the district between 17th and 19th.

Q. You said yesterday it was 17th or 19th. A. Yes, sir, to the best of my recollection, I said. I know it was somewhere in the vicinity.

Q. Did you father give you the address to go to? A. Yes, sir, at that time he did.

Q. You had never been to that particular place before? A. No.

Q. You do not recall the address? A. No.

Q. You have no idea whether it was 17th, 18th, or 19th?

1958

Mr. Turkus: Objected to as already answered.

The Court: Objection sustained.

Mr. Turkus. Exception.

Q. Might it have been 14th Street? A. No, sir.

Q. Might it have been 34th Street? A. No, sir, definitely no.

Q. You are sure it was one of those three streets? A. Yes, sir.

Q. Was it one of those two streets or one of those three streets?

1959

Mr. Turkus: I object to that as having been already answered by the witness; she has gone over it in detail.

The Court: Objection sustained.

Mr. Climenko: Exception.

1960

Sylvia Greenspan—For People—Cross

Q. How did you travel from the place of business of the New York and New Jersey Transportation Company, wherever that may have been, to the place you went to?

Mr. Turkus: I object. This witness cannot with certainty fix that.

1961

Mr. Climenko: The witness has not said anything about what she did or did not do. I object to this remark of Mr. Turkus. There is no excuse for this interruption of cross-examination, and I ask the jury be instructed to disregard it.

The Court: You might inform the Court why it is necessary nine years after an alleged meeting to find out the manner of travel.

Mr. Climenko: I object to your Honor's question.

The Court: I am asking you a question. The Court asked the question and is entitled to an answer, and demands an answer.

1962

Mr. Climenko: In view of the fact it is demanded, I will answer it, but I object to the question and I object to the fact of a demand. I take exception.

The Court: This is disorderly. The Court withdraws the request. Your conduct is impertinent.

Mr. Climenko: I take an exception to your Honor's remarks.

The Court: It is disrespectful to the dignity of the Court. The objection to

the question is sustained upon the ground the question is frivolous.

Mr. Climenko: Exception to the ruling; exception to the Court's comment.

Q. Now, how long did it take you to go from the office of the New York and New Jersey to the place where you did go on that day? A. About ten minutes.

Q. Did you travel by foot? A. No, sir.

Q. Do you recall how you traveled?

1964

The Court: The Court sustained objection to that; it is utterly frivolous.

Mr. Climenko: Exception to the Court's comment.

The Court: You will not repeat questions when the Court sustains objection, unless you are willing to be accountable to the Court for that disobedience.

Mr. Climenko: I did not hear that. I ask it be repeated. I take exception.

The Court: The remark was perfectly audible. The Court will take fifteen minutes' recess until counsel thinks over his proper court demeanor.

1965

The jury is excused.

Mr. Climenko: I except. I submit to your Honor there has been nothing wrong with my demeanor.

The Court: The defendants are remanded.

(The jury retired from the court-room, after being admonished not to talk about the case among themselves nor to anyone

1966

Sylvia Greenspan—For People—Cross

else, nor allow anyone to talk to them about it during the recess.)

(A short recess was then taken, during which the following occurred:)

1967

The Court: The incident which just occurred calls for comment here and now by the Court to the end there be a continuation of orderly sequence and conduct in the trial. There cannot be an orderly trial unless counsel and the Court are in accord in their respective attitudes toward one another. It is very easy for the trial

1968

of any case to become disorderly unless both sides use proper restraint. Now, it is fundamental in trying a case—I learned it through twenty years practicing law as a trial lawyer—that to hope to be successful before a jury the attitude of counsel must at all times be one of respect in relation to the judge. I know that from experience. The Judge is not taking sides in the issue now being tried on either side. The jury is quick to sense if the Judge's dignity, which means the Court, is not respected. I say this not as censure; I say this as food for thought, because I am talking to experienced and distinguished trial counsel. What I am about to say particularly is not said in tone of censure. There has grown up in the last few years a tendency to do what is known as "baiting the Court" in an attempt to impair the judicial poise, and in a manner to get some sort of display, emotionally, from the Court, to which exception is taken.

which may be for the hope of disapproval upon review of the record in the event of conviction. This is not ethical and I do not want it indulged in here. I am giving my attention exclusively to the trial of this case, and this is the seventh week. So far we have been able to get along very nicely. I want it to continue. When the Court makes a ruling, that is its judgment. The ruling may not be acceptable to counsel, and an exception may be taken, but it does not call for argument or dispute. There must not, under any circumstances, be a repetition in persistently plying a question to any witness once the Court has ruled. That settles the point. I have said this and I must ask there be no comment by counsel on it. Just drink it in. I think, with proper understanding, we will be able to get along very nicely together. It will help the trial of this case.

1970

Take note on the record the jury was not present during the Court's remarks to counsel.

1971

Mr. Climenko: I do not want to comment, but I would like to reserve an exception to your Honor's comment.

The Court: Do not start in again.

Mr. Climenko: May I simply note my exception?

The Court: Yes, I will tell you now, as long as you have shown an indication to start in again, that you will not suc-

1972

Sylvia Greenspan—For People—Cross

ceed in getting the Court's goat, if I may use that expression—

Mr. Climenko: (interrupting) May I note an exception—

The Court: Sit down until the Court is finished. Do not bring the jury down. I may have to deal with counsel. The Court will be firm enough to deal with you, sir, if you disregard what the Court has endeavored in a courteous manner to bring to your attention, and if, by any chance, you succeed in your effort, which is now obvious, of throwing the Court out of judicial poise, I doubt if any appellate tribunal would do other than condemn you for the practice. I will deal with you at the proper time, if necessary.

1973

Mr. Climenko: May I take an exception to—

The Court: Pardon me. You will sit down until I am through. I will deal with you at the proper time, if necessary, because now I have your number. I thought I had straightened this out in a proper manner.

1974

Mr. Climenko: May I have an exception to your Honor's remarks?

The Court: As long as you are the lone sheep in the line of defense counsel in this attitude—

Mr. Climenko: (interrupting) May I take an exception simply to that remark? I think your Honor's comment is improper.

The Court: This is simply a disorderly

1975

interruption for which the Court now censures you.

Mr. Talley: Before the jury come in I desire, as one of defense counsel, to take exception to your Honor's remarks and observation and direction to defense counsel, particularly in your reference to the fact that Mr. Barshay is the lone sheep amongst defense counsel.

The Court: I did not say Mr. Barshay.

Mr. Talley: Mr. Climenko. We are at a loss to understand why the episode has been created, causing a delay in the trial, with the comment of the Court.

1976

The Court: Now you will have until 1:30 to think it over, because, obviously, the purpose of taking exception would be utterly worthless and possess nothing for review.

Mr. Talley: However, we have to protest against your Honor's remarks.

The Court: Pardon me. The obvious purpose of it is to throw the Court further out of poise, for which you are censured.

1977

We will take a recess now until 1:30.

Mr. Talley: I object to the trial being interrupted while the witness is under cross-examination.

The Court: Defendants are remanded.

Mr. Talley: Note my exception.

(Recess taken until 1:30 P. M.)

1978

Sylvia Greenspan—For People—Cress

AFTERNOON SESSION

TRIAL RESUMED

SYLVIA GREENSPAN, a witness on behalf of The People, resumed the stand and testified further as follows:

Cross-examination by Mr. Climenko (continued):

1979

Q. Now, Mrs. Greenspan, did this meeting take place four months after you opened the books or four months after you began work for the company? A. The meeting took place about two months after I started work there.

Q. You said yesterday, in answer to a question by Mr. Turkus, that it was four months after you started work. Do you recall saying that? A. I don't know. I know it was a few months after.

1980

Q. If I may refer to what you said yesterday and call your attention to page 359, to what would be the final part of the page of the minutes where this appears, and I invite your attention to this question which was put to you by Mr. Turkus: "I want to direct your attention to the time when you had been in the employ of your father and his partners in the New York and New Jersey Clothing Transportation Company for about four months. Approximately when was that? Will you fix that time? A. To the best of my recollection it was during the summer of 1932.

"Q. Did you say during the summer of 1932, to the best of your recollection? A. That is right."

Do you remember those questions and your answers? A. Yes.

Q. That was yesterday? A. Yes.

Q. So that yesterday you said that you thought that this meeting took place four months after you began working.

Mr. Turkus: Just a minute. That is not—

Mr. Climenko: I have not finished the question.

1982

Mr. Turkus: I am sorry.

(to witness) Will you refrain from answering until I register an objection?

The Court: Finish the question.

Q. Did you say yesterday this meeting took place four months after you had begun work?

Mr. Turkus: That is objected to. That is not the tenor of those questions and answers.

The Court: Sustained. That is not the answer

1983

Q. All right. I call your attention to another portion of your testimony yesterday:

“Q. Sometime during the summer of—”

Mr. Turkus: What page?

Mr. Climenko: Same page. I am skipping the preamble to the next question, so that you may follow.

Q. “Sometime during the summer of 1932 did you receive a telephone call from your father,

1984

Sylvia Greenspan—For People—Cross

the late Joseph Rosen?" Have you that question? "A. Yes, I did receive a telephone call."

Mr. Climenko: And then, if I may say so, there is the testimony, Mr. Turkus, with respect to the taking the books to a certain place.

Q. Do you recall that testimony yesterday?

A. Yes.

1985

Mr. Turkus: You have not read it.

Mr. Climenko: Do you want me to read all of it?

Mr. Turkus: Yes.

Mr. Climenko: If your Honor pleases, I am trying to read this record. If, on the other hand, there is objection—

Mr. Turkus: I have no desire that he read the record made yesterday, but the next question was—

The Court: That was simply a side remark of counsel. That was not an objection.

1986

Q. Was it two or four months after you started work that this meeting took place?

Mr. Turkus: That has been answered yesterday and answered today.

The Court: Yes. Sustained.

Mr. Climenko: Exception.

Q. Will you tell me how long after you started work this meeting took place? A. A few months.

Q. A few months? A. Yes.

Sylvia Greenspan—For People—Cross

1987

Q. You do not remember whether it was two or four?

Mr. Turkus: Objected to. That has been answered.

The Court: Sustained.

Q. You started work there in August, did you not? A. No.

Q. Did you not say to me this morning that you started work four months after you opened the books? A. Yes, and I believe you approximately set the date as the middle of July, approximately.

1988

Q. So that this meeting, if it took place two months after you started work there, took place in September; is that correct?

Mr. Turkus: Objected to. That is obvious if.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Did the meeting take place before September, 1932.

1989

Mr. Turkus: Objected to as already answered.

The Court: She can say if she remembers.

A. The best I can answer to that is that it took place about that time.

Q. About September of 1932? A. Yes.

Q. When you reached the place where the meeting occurred, did you know on what floor the

1990

Sylvia Greenspan—For People—Cross

office was? A. No. As I came in there was a freight elevator there, and it seemed as though he was waiting for me, because he said, "I will take you right up."

Q. Somebody in the freight elevator? A. Yes.

Q. What floor did you go to? A. I don't know. He took me right up, and I did not bother to take notice.

Q. You don't remember what floor you went to? A. No.

1991

Q. As you entered this place of business, did you come into an office? A. As I entered the place of business there was a blank wall facing me, and I noticed a small office to my right.

Q. And is that where you went? A. Yes.

Q. And in that office you met these four men? A. Yes.

Q. Had you ever seen Mr. Shapiro before that day? A. No.

Q. Was he introduced to you on that day? A. No.

Q. He was not? A. No.

1992

Q. Have you ever seen him since that time? A. No.

Q. Can you describe him? A. No.

Q. You don't recall what he looks like? A. No. That was the only time I ever saw him.

Q. I say, you do not remember what he looked like? A. No.

Q. He is the man who participated in this conversation? A. Yes.

Q. And whom you heard talk? A. Yes.

Q. Is that correct? A. Yes.

Q. Did you see the name of any concern on the door of this place as you entered?

Mr. Turkus: Objected to. That was answered yesterday. My recollection is that the witness responded something with the word "canvas" in it.

The Court: That was on the direct.

Mr. Turkus: Excuse me?

The Court: Overruled.

A. Yes, I saw a name there.

Q. Do you recall what the name is? A. I repeat that I remember the name "canvas," but I cannot give you the full name.

1994

Q. You are sure that the name "canvas" was included? A. To the best of my recollection.

Q. Had you been given that name before you went there? A. Well, I was told where to go.

Q. Yes, so that you were given a name?

Mr. Turkus: Objected to.

A. No.

Mr. Turkus: It has been answered. Objection is withdrawn.

1995

The Court: Sustained.

Q. Do you remember the name "Century Canvas"? A. I only remember the name "canvas." I could not give you a better answer than that.

Q. You do not know whether it was "Century Canvas"? A. No, I don't.

Q. Will you describe the furnishings of this room that you entered? How was the room furnished? A. What do you mean by "how"? The usual way an office is furnished. It had a desk

1996

Sylvia Greenspan—For People—Cross

as I walked in, and some filing cabinets. That is all I can recall.

Q. How many chairs? A. I do not know.

Q. Were there any chairs there? A. There was a chair behind the desk, that Mr. Shapiro was sitting on.

Q. Were there any other chairs? A. I don't recall.

Q. Don't you know whether the other people were seated or standing? A. They were standing.

1997

Q. Was your father standing? A. Yes.

Q. And you were standing? A. Yes.

Q. So that there was only one chair in this room?

Mr. Turkus: Objected to. That is not proper.

The Court: Sustained.

Mr. Climenko: Exception.

1998

Q. Was there more than one chair in the room, as best you can remember? A. I don't know.

Q. You do not know now whether there were five chairs or two chairs, do you? A. No.

Q. Was there a window in this room? A. I don't remember.

Q. You don't remember whether this room had any windows, do you? A. No, I don't.

Q. It might have had? A. It might.

Q. You have no recollection on that subject at all? A. No.

Q. You were there for about twenty minutes? A. About.

Q. Is that correct? A. Yes.

Q. Who was the president of New York and New Jersey Trucking Corporation? A. I don't know if they had a president.

Q. Don't you know that Mr. Bluestein was the president? A. No.

Q. Even now you don't know that? A. No. I don't.

Q. What office did your father hold in the corporation? A. I don't know anything about the officers.

Q. Well, you drew the checks, didn't you? A. Yes.

2000

Q. The checks had places for officers to sign? A. I don't believe it had.

Q. You think not? A. I think not.

Q. Your recollection is that there was no reference to the name of an officer or a blank or a line for which an officer was to sign the check of the corporation?

Mr. Turkus: Objected to as already answered.

The Court: Overruled.

2001

A. No, I don't recall that.

Q. Have no recollection of it? A. No.

Q. When you returned to the place of business of the New York and New Jersey Trucking Corporation, did you mention this meeting to Mr. Bluestein? A. I don't remember if I saw him there at the time.

Q. Well, did you see him the next day? A. I may have. I don't know.

Q. Well, you stayed on at work there for four months after this incident, did you not? A. Yes.

Q. You saw Mr. Bluestein at some time after

2002

Sylvia Greenspan—For People—Cross

that occurrence? A. Yes, but I don't know if it was the next day or not.

Q. Whenever it was, did you at any time mention to Mr. Bluestein, the president of this corporation, this incident?

Mr. Turkus: Objected to.

The Court: Overruled.

2003

Mr. Turkus: Is your Honor aware of the fact there is the inclusion of "Mr. Bluestein, the president of this corporation", with no testimony at all that he was?

The Court: I did not notice that. Just reframe it.

Mr. Climenko: All right.

* Q. Did you ever at any time mention this incident to Mr. Bluestein? A. I don't believe I did.

2004

Q. And did you ever at any time mention this incident to Mr. Sobler? A. I don't believe I discussed it with anybody but my father.

Q. Would you be good enough to answer my question?

Mr. Turkus: That is objected to.

Q. Did you ever mention it to Mr. Sobler?

Mr. Turkus: The witness has just responded she does not believe she discussed it with anyone except her father. That excludes Mr. Sobler and excludes everybody else.

Mr. Climenko: With that explanation, I am glad to accept the answer.

Mr. Turkus: That is English.

Q. Before you started work for New York and New Jersey, were you yourself employed in some other place? A. You mean at the time I took that job?

Q. Immediately before, did you have another job? A. No, I don't believe I was working at the time.

2006

Q. For how long had you not been working before you took the job with New York and New Jersey? A. Probably a few months.

Q. When your brother left and you came in there, did he take a job anywhere? A. No.

Q. You continued to live with your family in 1932, did you not? A. Yes.

Q. Did your brother go back to college? A. In 1932?

Q. Yes. A. I don't know exactly what year he went back.

Q. Did he go back to college in 1931?

2007

Mr. Turkus: Objected to. We went over that this morning, about the college.

The Court: Sustained.

Mr. Climenko: Exception.

Q. Do you remember now whether he went back to college in 1932?

Mr. Turkus: I object to it.

The Court: Sustained.

Mr. Climenko: Exception.

2008

Sylvia Greenspan—For People—Cross

Q. While you were working at New York and New Jersey, were you looking for other employment? A. No.

Q. You were not? A. No.

Q. How many hours a day did you work at New York and New Jersey while you were there? A. A full day, from 9 to 5:30.

Q. You are sure about that? A. Yes.

Q. You opened these books in March or April of 1932, according to your present recollection? A. Yes.

2009

Q. And you came back to the corporation, as you said this afternoon, perhaps sometime about the middle of July, is that correct? A. About June or July.

Q. You are not sure which? A. No; I believe my brother worked there about three or four months, which would mean that I had to work about June or July.

Q. Did your brother find other employment after he quit working there?

2010

Mr. Turkus: I object to it as incompetent, irrelevant, immaterial.

The Court: Sustained.

Mr. Clinenko: Exception.

Q. While you were working there, was there a strike affecting this industry? A. I think there was a strike.

Q. When did it occur? A. Shortly before the business broke up.

Q. Did it occur while you were working there? A. I don't know if I was working there at the time. I know of a strike. I do not know

whether I left already or I was still there at the time.

Q. Wasn't there a strike in progress during the summer of 1932 while you were there? Don't you know that to be a fact? A. I don't remember whether I was there at the time or not. I know there was a strike.

Q. You have no recollection of that? A. No.

Q. Did the strike hurt the business? A. Definitely.

Q. It did? A. Yes.

2012

Q. By the time that you returned after you had opened the books and you had been out of there for three or four months and you came back, was Kelly still in that corporation? A. I believe he was.

Q. You think that he was there in July or August, 1932? A. I think so. I am not sure. I know he was in the business at some time, but exactly what time that included, I don't know.

Q. Well, at the time that you opened the books of the corporation, did he have an interest in the business?

2013

Mr. Turkus: Objected to. We went over that yesterday, about the interest of the various partners in the corporation, where the witness made it clear she had access to none of those books.

The Court: Sustained.

Mr. Climenko: Exception.

Q. At the time that you began work, was Kelly there in that place of business, working there?

2014

Sylvia Greenspan—For People—Cross

Mr. Turkus: Objected to as answered yesterday.

The Court: Overruled.

A. I believe I answered that. As far as I could remember, I know he was there at some time. Exactly what time that was I don't know.

2015

Q. Don't you know as a matter of fact that Kelly withdrew and took with him his trucks two months or three months at the most after the business started? A. No, I don't know that.

Q. You don't recall that? A. No.

Q. You do not know whether it is a fact or not a fact? A. No.

Q. And you do not remember whether when you came back to work there as a bookkeeper Kelly was there or he was not there? A. That is right.

Q. Don't you know that during the time that you were not there that business was so bad that this corporation could not pay its garage bill?

2016

Mr. Turkus: Just a minute. How possibly could anybody know something when she was not there?

The Court: Overruled. Do you know anything about that?

The Witness: Yes, that is not so. I came to work there because business was progressing and my brother could not handle it.

Mr. Climenko: I move to strike it out.

Mr. Turkus: Now I move that it stand as responsive to the question.

The Court: Let it stand.

Mr. Climenko: Exception.

Q. As a matter of fact didn't you go to work there because you had nothing else to do and your brother had an argument with Sobler? Isn't that the fact? A. On the contrary, I did not want to work for my father. My father asked me to do him a favor—

Mr. Turkus: He has shut off an answer.

2018

Mr. Climenko: I do not want to shut off any answer.

(Answer read by the reporter.)

Q. He wanted you to do him a favor at a time when you were unemployed and had been unemployed for some months? A. That is right.

Q. And he wanted you to do him a favor because that concern could not afford a regular bookkeeper? A. No, why not?

Mr. Turkus: Will you continue, why not?

2019

The Witness: They paid me a salary. They could just as well have paid somebody else.

Q. They paid you \$15 a week as you recall it? A. Yes.

Q. Don't you know that the concern did not pay its rent during the time that you were working there? A. No.

Q. You don't recall it? A. No. They paid.

2020

Sylvia Greenspan—For People—Cross

Q. Don't you know that it is a fact that they did not pay their electric light bill? A. No.

Q. Don't you know that they did not pay their telephone bill? A. Why didn't they pay? The business was going along all right.

Q. Don't you know that it is a fact that they did not pay it? A. No, I don't know that.

Q. Don't you know it is a fact that they did not pay their chauffeurs? A. No.

2021

Q. Don't you know that employees of that concern as of 1932 are still unpaid as of the time when you were working there as a bookkeeper? Don't you know that to be the fact? A. No.

Q. Don't you know that it is a fact that those telephone bills are still unpaid to this day? A. No, I don't know.

Q. After your father left the New York and New Jersey Transportation Company, do you remember what day of the week it was that he did leave? A. No, I cannot remember that.

2022

Q. Do you know that he left on a Saturday and on the following Monday started work for Garfield Trucking Company? A. No.

Q. Do you know that he got that job when he requested Mr. Buchalter to help him get a job? A. I don't believe it.

Q. I say don't you know that that is the fact? A. No.

Q. Don't you know that he continued to work for Garfield thereafter for two years? A. I know he worked for Garfield Express.

Q. Yes. A. But not as the result of that.

Q. Well, whether you know it as the result of that or not, do you know that after he had been working there for six months Mr. Louis Cooper

discharged him and he asked Mr. Buchalter to have him reinstated and at Mr. Buchalter's request he was reinstated? Did you know that? A. No.

Q. Did you know what he was receiving as a salary from Garfield Express? A. No, I don't.

Q. Did you know that he was receiving at least \$125 a week while he was working there as against practically nothing that he was ever able to draw out of New York and New Jersey?

Mr. Turkus: Objected to. That was answered yesterday.

The Court: She has answered on both propositions. Sustained.

Q. Don't you know that your brother returned to college in the fall of 1932? A. He returned to college. I don't know exactly when.

Q. Do you know that your father was finally discharged by Louis Cooper at the end of two years of employment by Garfield? A. Yes.

Q. You do know that? A. Yes.

Q. Do you know that after that he obtained another job with another man by the name of Larry Cooper? Did you know that? A. He obtained another job. I don't know who he was working for.

Q. Don't you know that he got that job when he requested Mr. Louis Buchalter to help him find employment? A. No.

Q. You don't know that? A. No.

Q. Did you ever hear the name of Krames? A. No.

Q. Do you know that in order to find a position for him, it became necessary to transfer a

2026

Sylvia Greenspan—For People—Cross

man from the business of Larry Cooper to Louis Cooper's business, the Garfield Express, and that that was the way in which a job was made for your father? Don't you know that? A. No, I don't.

Q. You never heard that before? A. No.

Q. Were you living at home all this time? A. Yes.

2027

Q. Did you know that your father left Larry Cooper because he suffered a heart attack? A. No, definitely not.

Q. Well, did you know that your father was sick? A. Yes, I knew my father was sick later.

Q. Did you know that he gave up his employment with Larry Cooper because he was suffering from a heart attack? A. No, definitely not.

Q. Do you know that he suffered from a heart condition and that that was the reason that he gave up his job with Larry Cooper? A. No.

Q. Do you know that he voluntarily gave up his position with Larry Cooper? A. He did not.

2028

Q. You say he was discharged by Larry Cooper? A. I don't know, but he did not voluntarily give it up.

Q. Which way did it happen, do you know? A. I don't know.

Q. You say that he did not voluntarily give it up? A. Of course not.

Mr. Turkus: Objected to as just answered.

Q. You also—

Mr. Turkus: Please, sir. It is argumentative, been answered.

The Court: Sustained as argumentative.

Q. Do you know that this company could not afford to pay for the repair of its trucks while you were there? A. The company could afford to pay everything until the business went bad.

Q. Do you know that the company did not pay for the repair of its trucks while you were there?

Mr. Turkus: Objected to as just answered.

2030

The Court: Sustained.

Mr. Climenko: Exception.

Q. Do you know that this company could not afford an accountant?

Mr. Turkus: Objected to. The witness has given an omnibus answer that the company paid for everything until business went bad. That answers it.

The Court: Sustained.

Mr. Climenko: I object to comment of Mr. Turkus and I move to strike it out and I respectfully request your Honor to instruct the jury to disregard it.

2031

The Court: The objection is sustained.

Q. Do you know that this company never made enough money so it was ever obligated to pay an income tax?

Mr. Turkus: Objected to on the same ground.

2032

Sylvia Greenspan—For People—Cross

The Court: Overruled. Do you know if it paid its income tax or not?

The Witness: No, I don't.

Mr. Climenko: That is all.

Mr. Turkus: Any farther cross?

Mr. Talley: Yes.

Mr. Rosenthal: Not by Capone.

Cross-examination by Mr. Talley:

2033

Q. Madam, you testified you saw Max Rubin on the boardwalk at Coney Island? A. Yes.

Q. You say that was about four weeks ago? A. No, that was in August of this year.

Q. In August of this year? A. Yes.

Q. Was he pointed out to you by some one? A. No, I know him.

Q. You did know him? A. Yes.

Q. Were you in company with your mother at the time you saw him? A. I believe I was walking with my mother.

Q. Was your mother stopping then at the Half Moon Hotel? A. Yes.

2034

Q. Did she tell you that Max Rubin was stopping at the Half Moon Hotel?

Mr. Turkus: Objected to, incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you know that Max Rubin was stopping at the Half Moon Hotel? A. Yes.

Q. At the same time that your mother was? A. I did not know whether he was still there or not. I had heard that he was there.

Q. Was he there during the time that your mother was a guest at the Half Moon Hotel in Coney Island? A. I don't know.

Q. How long was your mother staying at the Half Moon Hotel? A. During the summer.

Q. This past summer? A. Yes.

Q. Do you know for how long? A. No.

Q. Do you know how many weeks or months?

A. No, I don't know.

Q. How many times did you visit her there?

A. About three times.

2036

Q. And do you remember what interval of time it was between your visits? A. Yes.

Q. How long a time elapsed between each of the three visits that you made? A. My vacation was during the month of August. I visited my mother a week before my vacation and twice during my vacation.

Q. That would be in July? A. In August.

Q. Were your three visits in August? A. Well, the first one might have been before August.

Q. Yes, I asked you was it in July? A. Probably.

2037

Q. Was it in June? A. No.

Q. Were you working last summer? A. Yes.

Q. Where?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

Mr. Talley: Proper cross-examination. I have a right to inquire about this witness' whereabouts.

The Court: Overruled.

Q. Where? A. Do you want me to give the name of the concern?

2038

Sylvia Greenspan—For People—Cross

Q. I want you to give me the name and the address. A. Majestic Rayon Corporation, 116 West 23rd.

Q. Are you there now employed? A. Yes.

Q. How long before July and August of last year were you employed there? A. I have been there for five years.

Q. You did not give up your employment when you were married? A. No.

2039

Q. Did you speak to Max Rubin when you saw him on the boardwalk? A. No.

Q. Did you speak to your mother about Max Rubin?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did your mother tell you that she had talked with Max Rubin while she was a guest at the Half Moon Hotel?

2040

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: Exception.

Q. Did you ever see Rubin and your mother talking together? A. No.

Q. Was this occasion that you speak of the only time when you saw Max Rubin?

Mr. Turkus: Objected to. It is an ambiguous question. I do not know what occasion he is talking about.

Mr. Talley: Nothing could possibly be plainer than that.

Mr. Turkus: There is an objection before the Court.

The Court: I think she said, in answer to a previous question, that she knew Max Rubin by sight and that she did not have to have her mother tell her that that was Max Rubin, so it is a fair inference she met him before.

Mr. Talley: Does your Honor sustain the objection?

2042

The Court: I am just calling that to your attention. She may answer.

Mr. Talley: I ask for a ruling.

The Court: Overruled.

Q. Will you answer, please? A. I met Max Rubin previously on a number of occasions.

Q. A number of occasions? A. Yes.

Q. Did you ever meet him in the Half Moon Hotel? A. No.

Q. Was your mother stopping at any other hotel? A. No.

2043

Q. Than the Half Moon Hotel since 1936?

Mr. Turkus: I object to it as incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. Did you ever visit your mother in any other hotel than the Half Moon Hotel since your father's death?

Mr. Turkus: Objected to.

The Court: Sustained.

Mr. Talley: Exception.

2044

Sylvia Greenspan—For People—Cross

Q. Do you know a restaurant across the street from the store that your father had? A. I don't believe there was a restaurant there.

Q. Did you ever hear of a restaurant named Ardie's? A. Yes, but that is not a restaurant.

Q. What is it? A. Call it a candy store.

Q. A candy store? A. Yes.

Q. Where was that? A. That was on the corner of Sutter and Bradford.

Q. Is that near where your father's office was?

2045

Mr. Turkus: Ardie's luncheonette is on the corner, right there, Bradford and Sutter.

Mr. Talley: I want it on the record, please.

Q. How near was it to your father's store on Sutter Avenue? A. Across the street.

Q. That is what I asked you, wasn't it, madam, in the beginning.

2046

Mr. Turkus: You asked about the office. Objected to.

Mr. Talley: I object to any comment from the District Attorney.

Mr. Turkus: I have an objection before the Court.

Mr. Talley: Then make the objection without comment while I am cross-examining.

Mr. Turkus: I am talking to Judge Taylor who presides at the trial.

The Court: I think the jury understands both answers. It was across the street but not directly across.

Sylvia Greenspan—For People—Cress

2047

Q. Did you know a brother of Abe Reles? A. Yes.

Q. Did you know that he was carrying on a shylock business in this store that we have described as Ardie's?

Mr. Turkus: Objected to as incompetent, irrelevant and immaterial, and insulting to the witness.

The Court: Overruled.

2048

Q. Did you? A. No.

Q. Did you ever see Abe Reles' brother? A. Yes, I saw him.

Q. Did you see him in Ardie's? A. Yes.

Q. Did you ever see your father there? A. No.

Q. You never saw your father and Reles' brother speaking together? A. He may have passed the time of day, said hello.

Q. Did you see them speaking together? Never mind what he may or may not have done. Did you see them speaking together? A. Not that I know of.

2049

Q. Did you ever see Abe Reles in your father's store? A. No.

Q. Did you ever see Abe Reles' brother in your father's store? A. No, I don't believe I have.

Q. The only place then you saw Abe Reles' brother was in Ardie's, is that right? A. In or standing outside.

Q. Did you ever see your father in Ardie's restaurant?

2050

Sylvia Greenspan—For People—Redirect

Mr. Turkus: Objected to as already answered. The witness said no.

The Court: Overruled.

A. No.

Q. Did you ever see him standing outside of Ardies' store— A. No.

Q. With Reles' brother? A. No.

Q. Do you know Abe Reles? A. No.

Q. Did you ever see him? A. No.

2051

Mr. Talley: I have no further questions.

Mr. Rosenthal: Defendant Capone has no cross-examination.

Mr. Turkus: (To court officer) Will you bring in that other exhibit? Will you remove the one on the easel and put on this picture in the back. There is one showing the corner intersection.

(To reporter) Be kind enough to mark that exhibit for identification.

2052

(Picture marked People's Exhibit Q for identification).

Redirect examination by Mr. Turkus:

Q. Mrs. Greenspan, Judge Talley spoke to you about Ardies which you described as a soda or candy store. Will you turn around and look at People's Exhibit Q for identification and see if you see a picture of Ardies' soda, candy and luncheonette?

Sylvia Greenspan—For People—Recross

2053

Mr. Cuff: I object to it. Why don't you put it in evidence?

Mr. Turkus: Why don't you be patient?

The Court: Overruled.

A. May I answer?

Q. Yes, you may get up and look at it.

(Witness indicates on exhibit).

Q. Indicating the corner store to the left of the exhibit? A. Yes.

2054

Q. That was on the corner of Bradford and Sutter, is that correct? A. Yes.

Mr. Turkus: That is all.

Recross examination by Mr. Talley:

Q. Mrs. Greenspan, this brother of Abe Reles that I asked you about, what is his first name?

A. I knew him as Sandy.

Q. You do not know him by any other name?

A. No.

2055

The Court: This chart is not in evidence.

Mr. Turkus: I will have it in evidence by the next witness.

The Court: All right.

Mr. Cuff: What is that street?

Mr. Turkus: You are looking down the direction from which Cappadora came. You are looking at Sutter as the picture faces you.

Mr. Cuff: Looking east on Sutter?

2056

Sol Bernstein—For People—Direct

Mr. Turkus: I don't think it is east. You are looking in the direction of Wyona Street. You will remember Cappadora's testimony.

Mr. Barshay: We consent it be offered in evidence.

Mr. Turkus: Offered in evidence.

(People's Exhibit Q for identification received and marked People's Exhibit 25 in evidence).

2057

Mr. Turkus: The next witness I will call, your Honor, I doubt whether his testimony will be completed today.

The Court: Call him anyway.

SOL BERNSTEIN, called as a witness on behalf of the People, after being duly sworn, testified as follows:

2058

By the Court:

Q. Where are you stopping at present? A. In a hotel.

Q. What hotel? A. Half Moon.

Mr. Barshay: With your Honor's permission, may the record show that when this witness, Mr. Bernstein, came into the court room from your right he was preceded by a court attendant and he was followed by three men who I know to be detectives.

The Court: All right.

Sol Bernstein—For People—Direct

2059

Mr. Barshay: Will your Honor note my objection to that proceeding?

The Court: I did not see it. I take your word for it.

Mr. Cuff: Two of them have their badges on now.

Mr. Turkus: Mr. McDonough is one of them; Mr. Harrington is another one standing to your Honor's left.

Mr. Cuff: May I have the name of the other gentleman who followed?

2060

Mr. Turkus: Detective Jaimes Bell.

Mr. Cuff: And the court officer, to whom I have no objection, Mr. Meek.

Mr. Turkus: Is the objection to the protection of the witness?

Mr. Barshay: I object to the comment of Mr. Turkus. That was an unfair comment, and I ask the court to direct the jury now to disregard that and admonish Mr. Turkus not to repeat any such thing. There is no intimation that this witness in this court room or in any other place in this world needs any protection.

2061

Mr. Turkus: You will know that before the case is over.

Mr. Barshay: I object to that comment.

The Court: The jury will disregard all side play.

Mr. Barshay: Side play on the part of the District Attorney, sir.

The Court: Please—

Mr. Barshay: May you say that, please?

2062

Sol Bernstein—For People—Direct

The Court: Whichever side it comes from. The matter calls for no ruling.

Mr. Barshay: I ask your Honor—

The Court: You are dictating to the record. That is your right, but there is nothing that calls for a ruling. I do not know what it means, so please do not argue. Just proceed.

Mr. Barshay: Exception.

2063

Mr. Rosenthal: May I have a ruling? In view of the atmosphere created insofar as the defendant Capone is concerned by having two police officers standing in an unusual position next to the jury box while the witness is testifying and the two court officers, one standing directly behind the witness and the other to his left, I ask for a mistrial upon the ground of prejudicial conduct against the defendant Capone.

Mr. Cuff: Defendant Weiss joins in that motion.

2064

The Court: To get the record absolutely straight, let us have a survey of relative locations.

Mr. Rosenthal: All right, sir, I will take your Honor's statement as to where they are.

The Court: In the court room, behind or at the end of one of the rear corners of the jury box, are two men with badges whom I assume to be detectives. One is against the side window and one is directly in the corner. There are two court officers in their proper places, one directly

Sol Bernstein—For People—Direct

2065

behind the witness, another one to his left, at the steps. You have your record. It calls for no ruling. Of course, I deny the motion for a mistrial.

Mr. Rosenthal: I respectfully except.

Mr. Cuff: I except.

Mr. Barshay: May I make a motion for the withdrawal of a juror and the declaration of a mistrial on the ground that Mr. Turkus made a prejudicial remark?

2066

The Court: Denied.

Mr. Barshay: Exception.

Mr. Talley: I ask for the removal of the court officer that has been stationed directly behind the witness—

The Court: Denied.

Mr. Talley: —as he sits in the witness chair. He has not been there during the testimony of any other witness, and I object to this stage setting upon the entrance of this witness. I do not know what he is going to testify to, if anything, but I object to this display that has been occasioned because I regard it all as prejudicial to the defendant whom I represent and as unnecessary and unprecedented.

2067

The Court: The court officer, George Meek, who is personally assigned to me as a judge of this court, in my chambers only, his place is right there or any place else that the court sees fit to put him, and it is nobody else's affair. Motion denied.

Mr. Talley: Does your Honor contend his place is directly behind the witness

2068

Sol Bernstein--For People--Direct

chair while the witness is testifying or about to testify?

The Court: Proceed.

Mr. Talley: I except to your Honor's refusal to grant my request.

Direct examination by Mr. Turkus:

Q. How old are you, Bernstein? A. Thirty years of age.

2069

Q. Are you married? A. Yes, sir.

Q. Did you go to public school in Brooklyn? A. Yes, sir.

Q. In what section or district of Brooklyn did you go to public school? A. I went to Junior High School 178, Dean and Saratoga Avenue, Brooklyn.

Q. How old were you when you quit school? A. Fifteen years of age.

Q. Did you go to work after you quit school? A. Yes, sir.

Q. Do you remember what your first job was? A. Yes, sir.

2070

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

Q. Tell the court and jury what your first job was. A. I was a messenger boy in the telegraph office.

Q. Do you know how long you held that job? A. One month.

Q. Did you get a job after that? A. Yes, sir.

Q. What was the next job? A. An errand boy in a hat factory.

Sol Bernstein—For People—Direct

2071

Q. Do you remember where that hat factory was? A. I think it was on Waverly Place.

Q. In Manhattan? A. Yes.

Q. How long did you hold the job as errand boy? A. Three months.

Q. Did you then get some other work? A. Yes, sir.

Q. What was that job? A. A leather goods factory, as as a cutter.

Q. Did you work on a machine? A. Yes, sir.

Q. Do you remember the name of the company? A. Yes. 2072

Q. What is its name? A. Majestic Briefcase Company.

Q. Were they employed in the manufacture of briefcases? A. Yes, sir.

Q. How long did you work on a machine in the Briefcase Company? A. Three years.

Q. During all this time while you had these jobs, where were you living, Bernstein? A. In Brooklyn, Brownsville section.

Q. And did you associate with the people living in that district? A. Yes, sir.

Q. While you were working for the Briefcase Company on the machine, did you do any gambling? A. Yes, sir, lots of it. 2073

Q. And you became involved in debt? A. Yes, sir.

Q. Did you then start to borrow money? A. Yes, from shylocks.

Q. From shylocks operating where? A. Sackman and Livonia Avenue, Brooklyn, Brownsville section, in the Coffee Pot.

Q. From gambling did you go into some other kind of business? A. Yes, myself in shylocking.

2074

Sol Bernstein—For People—Direct

Q. And were you after that a professional loan shark? A. Yes, sir.

Mr. Barshay: I object to it, your Honor. This is a matter proper for cross-examination.

The Court: Overruled.

Mr. Barshay: Exception.

2075

Q. Now, while you were a professional loan shark, did you engage in any other occupation? A. Yes, sir.

Q. What were you? A. Gambler and a book-maker.

Q. Where did you operate from, Bernstein? A. Amboy and Sutter Avenue, Brownsville section.

Q. When you say from Amboy and Sutter Avenue, do you mean from the corner there? A. Yes, sir.

Q. On February 13, 1930, were you convicted of crime? A. I don't remember what year it was, but I was convicted of a crime.

2076

Q. I suggest to you the date of February 13, 1930, and the crime of unlawful entry. Does that refresh your recollection? A. Yes, sir.

Q. Were you convicted of that crime on that day? A. Yes, sir.

Q. What was your sentence? A. Suspended sentence.

Q. Were you convicted of crime after that? A. Yes, sir.

Q. I suggest the date of May 22, 1934, and the crime of petit larceny. Does that refresh your recollection? A. I don't remember what year, but I remember petit larceny.

Q. What was your sentence? A. Suspended sentence.

Q. Three years probation? A. Yes, sir.

Q. On both of the convictions were they on your plea of guilty to the court? A. Yes, sir.

Q. When you were a professional loan shark, bookmaker and gambler, did you make the acquaintance of various people in the Brownsville district of Brooklyn? A. Yes, sir.

Q. I direct your attention to in or about the year of 1932 and ask you whether you made the acquaintance of one Harry Strauss? A. Yes, sir.

2078

Mr. Barshay: I object to it, not binding on the defendant Buchalter.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Rosenthal: I object to it upon the ground it is leading and suggestive. The witness may state when he remembers meeting particular people but not have his attention directed by the District Attorney to a specific case. I object to the question as leading and suggestive.

2079

The Court: It is already answered, and objection is untimely.

Mr. Rosenthal: I ask that the answer be stricken. I could not get up any faster. Mr. Barshay was on his feet.

The Court: Denied.

Mr. Rosenthal: Exception.

Q. Did you know Strauss by any name other than Harry? A. Yes, sir.

Q. What was the name?

2080

Sol Bernstein—For People—Direct

Mr. Rosenthal: Objected to.

Q. Or names?

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Pep, Big Harry, and Pittsburg Phil Strauss.

Q. Where did you meet him for the first time, if you can recall?

2081

Mr. Barshay: Objection.

The Court: Overruled.

Mr. Barshay: Exception.

A. On Sackman and Livonia Avenue, Coffee Pot, in the Brownsville section.

Q. I did not hear what you said. A. On Sackman and Livonia Avenue, in the Brownsville section, in the Coffee Pot.

Q. Was the Coffee Pot a hangout? A. Yes, sir.

2082

Mr. Barshay: Object to it.

The Court: Overruled.

Mr. Barshay: Exception.

The Court: It is all collateral.

Mr. Barshay: Will you give me one exception to all this kind of questions?

The Court: Yes.

Q. Did you frequent or hangout in that Coffee Pot? A. No, sir. I used to borrow money off them.

Q. Do you include Pittsburg Phil Strauss? A. Yes, sir.

Q. At or about the time when you met Strauss, otherwise known as Pep, Big Harry and Pittsburg Phil, did you meet anyone else who is now present in this court room? A. Louis Capone.

Q. Point him out. A. Right over there (indicating defendant Capone).

Q. Where did you meet him? A. On ~~Sack~~ man and Livonia.

Q. The Coffee Pot? A. Yes, sir.

Q. Now, without mentioning the nature of the work, did you do any work for Louis Capone? A. Yes, sir.

Q. Did you do many jobs, without telling what the jobs were?

Mr. Rosenthal: I object to the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

Mr. Cuff: Same objection.

A. Can I hear it again?

(Question read by reporter.)

A. Many times.

Q. Did you ever receive any money from him for the work you did, for Capone? A. No, sir, I obeyed orders.

Mr. Rosenthal: I ask that the answer be stricken, the latter part of it.

The Court: Strike out the latter part.

2086

Sol Bernstein—For People—Direct

Mr. Rosenthal: I ask that the jury be admonished to disregard it.

The Court: Disregard it.

Mr. Rosenthal: I ask that this witness be informed ~~that~~ he should not volunteer anything that is not asked of him, sir.

The Court: So instructed.

2087

Q. Do you remember when one Joseph Rosen was murdered in a candy store at 725 Sutter Avenue, Brooklyn? A. Yes, sir.

Q. On the Friday before the Rosen murder, where were you? A. On Sackman and Livonia, having a general conversation with Harry Strauss, in my automobile.

Q. Where was your automobile? A. On Sackman and Livonia Avenue.

Mr. Turkus: I ask that this photograph be marked for identification.

2088

(Photograph marked People's Exhibit R, for identification.)

Q. Bernstein, I show you People's Exhibit R, for identification, and I ask you whether you can identify the picture. A. Yes, sir.

Q. What does the picture show?

Mr. Rosenthal: That is objected to.

Mr. Turkus: It is withdrawn in that form.

Q. Does that truly and accurately show Sackman Street near where your car was parked? A. Yes, sir.

Sol Bernstein—For People—Direct

2089

Mr. Turkus: I offer it in evidence.

The Court: As it was at that time?

The Witness: Yes, sir.

Q. Sackman and Livonia Avenue? A. Yes, sir.

(People's Exhibit R, for identification, received and marked People's Exhibit 26, in evidence.)

Mr. Barshay: I object to the introduction.

2090

Q. Will you look at People's Exhibit 26, in evidence, and tell us where on that photograph you had your automobile parked. A. Right near this ash can.

Q. When you say, "Right near this ash can," do you refer to the ash can nearest the telegraph pole on the left hand side of the picture? A. Can I take a look at it again?

(Exhibit handed to witness.)

The Witness: Yes, this here ash can
 over here.

2091

Q. Is that the one in the photograph nearest to the telegraph pole? A. Yes, sir.

Q. And you are referring to which side of the picture? A. This here side, the left.

Mr. Turkus: Now, may People's Exhibit 26, in evidence, be submitted to the jury for examination?

The Court: All right.

2092

Sol Bernstein—For People—Direct

Q. Bernstein, in what kind of an automobile were you seated which was parked near that ash can on People's Exhibit 26, in evidence? A. A Buick, four door, car, black.

Q. In relation to the Coffee Pot, where was your automobile—by that I mean where was the Coffee Pot located at that time? A. That was located on Livonia Avenue near Sackman.

2093

Q. In connection with the position of where your car was, where was the Coffee Pot? A. Across the street.

Q. Were you waiting for somebody in your car? A. Yes, sir, I was waiting for Mike Sickoff (?).

Mr. Barshay: I object to anything but "Yes".

Mr. Turkus: That is all. I consent that anything, if it came out, be stricken.

2094

Q. Who else frequented that Coffee Pot or hangout on the corner of Sackman and Livonia Avenue?

Mr. Rosenthal: That is objected to.

The Court: Overruled.

Mr. Rosenthal: Exception.

A. Louis Capone, Harry Strauss, Mike Sickoff, Bugsy Goldstein, Harry Maione, Abbendando, at that time.

Mr. Rosenthal: I ask that the answer be stricken as in no wise connected with this issue.

The Court: Overruled.

Sol Bernstein—For People—Direct

2095

Mr. Rosenthal: Exception.

Mr. Barshay: On the further ground that no relevancy or competency with respect to the defendant Buchalter, his name not having been mentioned.

Mr. Cuff: The same with respect to the defendant Weiss.

The Court: Overruled.

Mr. Barshay: Exception.

Mr. Cuff: Exception.

2096

Q. Without disclosing at this time the identity of the individual for whom you were waiting, were you waiting for somebody? A. Yes, sir.

Q. While you were in your car waiting for that person, did somebody approach you or come to where your car was? A. Along came Louis Capone, Mendy Weiss and Farvel Cohen.

Q. At that time who was in the car with you? A. Harry Strauss was in the car with me.

Q. You say Mendy Weiss. Point him out. A. Right over there, but he didn't have no glasses at that time.

2097

Mr. Turkus: Indicating the defendant Weiss.

Q. What name did you know Weiss under? A. As Mendy Weiss.

Q. And this man Cohen, what name did you know him by? A. Farvel Cohen.

Q. When Mendy Weiss, Farvel Cohen and Louis Capone came along, what happened? A. They called Harry Strauss out of the car.

2098

Sol Bernstein—For People—Direct

Mr. Barshay: May the record show an objection on the part of the defendant Buchalter?

Mr. Turkus: I thought you had a continuing—

Mr. Barshay: It is getting now to details. The defendant Buchalter not being there, I object to any testimony with respect to him.

The Court: Overruled.

2099

Mr. Barshay: Not binding upon him. Exception, sir.

(Question read by reporter.)

A. I did not finish it yet.

Q. Continue. A. Before getting out of the car—

Mr. Rosenthal: I object to the word "they".

The Court: Be more specific.

Mr. Rosenthal: I ask that it be stricken, sir.

2100

The Court: Try to be more specific.

Mr. Turkus: It is consented to, and I will reframe the question.

Q. As I understand it, you were seated in your car with Harry Strauss? A. Yes, sir.

Q. Along came Capone, Farve! Cohen and Mendy Weiss? A. Yes, sir.

Q. Did one of the three—and answer this yes or no—say something to Harry (Pittsburg Phil) Strauss? A. Yes, sir.

Q. Do you know which one said it? A. Mendy Weiss.

Sol Bernstein—For People—Direct

2101

Q. What did Mendy Weiss say to Strauss, if you can remember?

Mr. Barshay: I object to it.

The Court: Overruled.

Mr. Barshay: Exception.

A. Before he called him out of the car, before Harry Strauss went out of the car, he told me to hang around, don't go away.

Q. Who told you to hang around, not go away? A. Harry Strauss.

2102

Q. Had you known Mendy Weiss from before that occasion? A. Yes, sir, a year before.

Q. Had you known Farvel Cohen from before the occasion when they called Strauss out of the car? A. Yes, sir, a year before.

Q. Who introduced you to Farvel Cohen and Mendy Weiss? A. Louis Capone.

Q. When Harry (Pittsburg Phil) Strauss told you to stick around, in words or substance, did you remain in your car? A. Yes, sir.

Q. Did some period of time elapse? A. Yes, sir.

2103

Q. How long, can you remember? A. About three-quarters of an hour.

Q. What happened then? A. They all came back, Mendy Weiss—

Q. Yes. A. Harry Strauss, Louis Capone and Farvel Cohen.

Q. When those four came back, did one of the four speak to you? A. Yes, sir.

Q. Where were the other three when one of the four spoke to you? A. They were all together.

2104

Sol Bernstein—For People—Direct

Q. Who did the speaking? A. Harry Strauss.

Q. What did he say?

Mr. Barshay: May the record show that the defendant Buchalter, not being there, this testimony is not binding upon him, sir.

The Court: Overruled.

Mr. Barshay: Exception.

2105

The Court: The court makes that ruling because it is not confronted with the necessity of ruling at this time.

Mr. Barshay: All right. Then I won't interrupt and I will have a general objection on that ground.

The Court: It stands to reason that Buchalter has to be connected up by subsequent evidence.

Mr. Barshay: All right, sir.

The Court: Or the case against him will fall.

2106

Mr. Barshay: As long as the jury heard that, sir, I won't interfere with a general objection.

Q. While Capone, Weiss and Farvel Cohen were standing, as you have told the jury, what did Strauss say to you? A. Harry Strauss said to me, "Steal a car and get a drop."

The Court: What?

The Witness: "Steal a car and get a drop."

Q. The jury does not know what "a drop" is. What is "a drop"? A. A garage.

Q. A garage for what purpose? A. To put away something stolen.

Q. Did you tell the jury that a drop in that particular case was a garage in which to place a stolen car? A. Yes, sir.

Q. Is a drop known to you and your associates as a place where you hide or conceal stolen property? A. Yes, sir.

Q. Did Strauss ask you in the form of a question or was it in the form of an order?

2108

Mr. Rosenthal: Objected to.

The Court: Sustained.

Q. Tell us as best you can recall what Strauss said to you when he asked you to get that car and drop.

Mr. Rosenthal: Objected to, on the ground it is already answered and repetitious.

The Court: Anything in addition?

Mr. Rosenthal: That is not the question.

2109

The Court: I am asking Mr. Turkus, do you mean anything further?

Mr. Turkus: Yes.

The Court: Overruled. Did he say anything else?

The Witness: Yes, sir.

Q. Tell us what he said. A. He asked me if I could get a drop. I said to him, "Yes." Then he said to me, "After you get that, come over tomorrow afternoon at four o'clock on Sackman and Livonia Avenue. I want to see you."

Q. Did he say anything else about the car?

2110

Sol Bernstein—For People—Direct

Mr. Rosenthal: I object to that, if the court pleases, as leading and suggestive. The witness' memory has not been exhausted upon the conversation, if any. The directing of his attention to something while in the midst of a conversation is highly improper.

The Court: Sustained.

2111

Mr. Rosenthal: I ask your Honor to direct the District Attorney not to lead or suggest to the witness.

The Court: So instructed.

Q. Have you related all the conversation in the presence of Capone and Weiss and Farvel Cohen that you remember? A. Yes, sir.

Q. That you had with Strauss? A. Yes, sir. They were all over there together.

Q. What did you say? They were all together.

Mr. Cuff: I move to strike out all except, "Yes".

2112

Mr. Turkus: No, he said they were all together. I ask that it stand.

The Court: I have a note that he has testified all four returned together, and they stood together.

Mr. Cuff: Judge, I am asking to have the portion of that answer stricken—I am not referring to the entire part of his testimony—as not responsive to the question.

Mr. Turkus: Obviously, the witness did not understand the question because he said, "Yes, they were all together."

The Court: The part which counsel

Sol Bernstein—For People—Direct

2113

moves to strike out has already been testified to.

Mr. Cuff: No, I do not make it on that ground. I make it on the ground that it is not responsive to the question just put and answered.

The Court: I will strike it out as not responsive.

Q. What I want to know, Bernstein, is this: Have you told the court and jury everything that was said about the car and drop?

2114

Mr. Cuff: I object to that as already answered, if your Honor pleases.

The Court: He says so.

Mr. Turkus: I did not hear him say that.

A. Yes, they were all together.

Q. You said they were all together, but I want to know this—

Mr. Cuff: I move to strike that out, if your Honor pleases.

2115

Mr. Turkus: Will you keep quiet a minute?

The Court: I think I see what the trouble is.

Mr. Turkus: Certainly.

The Court: You may answer the question. Repeat it and listen carefully.

Q. Did you tell the Judge and jury here everything that was said by Strauss in connection with the automobile and the drop? A. Yes, sir.

2116

Sol Bernstein—For People—Direct

Q. What did you do after Strauss told you that?

Mr. Cuff: That is objected to.

The Court: Overruled.

Mr. Cuff: Exception.

A. I went right away.

Q. I don't hear you. A. I went right away to rent out a drop.

2117

Q. Where did you go to rent the drop? A. Lincoln and Ralph.

Q. Would you recognize a picture of the premises? A. Yes, sir.

Mr. Turkus: I ask that this photograph be marked for identification.

(Photograph marked People's Exhibit S, for identification.)

2118

Q. Bernstein, I show you People's Exhibit S, for identification, and ask you if you can recognize and identify it. Yes or no. A. This is the house and this is the alleyway.

Q. Just say yes or no. A. Yes.

Q. And does that truly show the house and alley thereon portrayed as it was when you went to rent the drop; substantially does it show?

A. At that time I think there was a fence over here, inside the alley.

Q. Substantially, is the picture the way the situation looked at that time with the exception of the fence? A. Yes, sir.

Mr. Turkus: It is offered in evidence.

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2119

(People's Exhibit S, for identification, received and marked People's Exhibit 27, in evidence.)

Q. Look at the photograph with the numbers over the doorway and see if it refreshes your recollection as to the address of the house to the right of the driveway on People's Exhibit 27, in evidence. (Handing exhibit to witness.)

A. Will you repeat that question again?

Q. Do you remember 1611-1613 Lincoln Place over the doorway of the house to the right of the driveway as you look at the picture, People's Exhibit 27? A. Yes, sir.

2120

Q. Is that the place where you went to rent the drop? A. Yes, sir.

Q. Was that on Lincoln Place? A. Yes, sir.

Q. Do you know between what streets? A. I know it was near Ralph.

Q. When you walk through the driveway of those premises set forth on the picture, Exhibit 27 in evidence for the People, are those garages in the back? A. Yes, lots of them.

2121

Mr. Turkus: May I show People's Exhibit 27 to the jury?

The Court: Yes.

Mr. Turkus (To reporter): Mark this for identification.

(Photograph marked People's Exhibit T, for identification.)

Q. I show you People's Exhibit T, for identification, and ask you if you recognize and can

2122

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identify the garages thereon pictured. A. Yes, sir.

Q. Are those the series of garages in back of the driveway shown on People's Exhibit 27, in evidence? A. Yes, sir.

Q. Is that substantially the way those garages looked the day you went out to hire a garage for a drop? A. Yes, sir.

Mr. Turkus: It is offered in evidence.

2123

(People's Exhibit T, for identification, received and marked People's Exhibit 28, in evidence.)

Mr. Barshay: We object.

Mr. Cuff: We all object.

Mr. Rosenthal: We object.

Mr. Talley: All counsel object, if your Honor please.

The Court: Overruled.

Defense Counsel: Exception.

2124

Q. Bernstein, did you hire one of the garages shown on People's Exhibit 28, in evidence, as a drop? A. Yes, sir.

Q. Look at People's Exhibit 28, in evidence, and directing your attention specifically to the tops of the doors of the garages, see if you can indicate which garage you hired for the drop. A. The second garage.

Q. Has it got something on top of the doorway? A. Yes, a little "2".

Q. A metal figure, "2"? A. Yes, it is right on top.

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2125

Mr. Turkus: May that exhibit, People's Exhibit 28, be exhibited to the jury?

The Court: Yes.

Q. Do you remember from whom you hired that garage? A. Yes, sir.

Q. Have you seen that person at the District Attorney's office? A. Yes, sir.

Q. How long did you hire the garage for? A. One month.

Q. How much did you pay? A. About eight dollars.

2126

Q. Was there some talk about the price, some haggling or bargaining? A. Yes, sir.

Q. What was that? A. At first she showed me a different garage that she wanted about six dollars—

Mr. Rosenthal: I object to any conversation with any owner of a garage not in the presence of any of the defendants.

The Court: Sustained.

Mr. Rosenthal: I ask that so much of the answer as has been given be stricken.

2127

The Court: It does not mean anything. Sustained.

Q. Well, at any rate, was it the garage with the metal "2" on it that you finally hired—

Mr. Cuff: That is already testified to.

Mr. Turkus: I have not finished the question.

Q. —for approximately eight dollars a month?

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Mr. Cuff: I object to it.

A. Yes, sir.

Q. Now, that you had the drop what was the next thing you did?

Mr. Rosenthal: I object to the preamble to the question.

The Court: Overruled.

Mr. Rosenthal: Exception.

2129

A. The next thing I done, I went to buy a lock because the superintendent told me—

Mr. Rosenthal: I object to anything the superintendent told him.

Mr. Turkus: I consent to it.

Q. You went to buy a lock? A. Yes, sir.

Q. Did you buy a lock? A. Yes, sir.

Q. And did you put the lock on the garage doors? A. Yes, sir.

2130

Q. After you got the lock for the drop, what did you do next? A. I went to Amboy and Sutter.

Q. About what time was that? A. It must have been about three o'clock.

Q. When you say three o'clock, do you mean three o'clock Saturday morning? A. Yes, sir.

Q. Or Friday morning? A. Three o'clock Friday morning—it was in the afternoon, three o'clock in the afternoon; three o'clock in the afternoon.

Q. I was confused myself as to the time. This is three o'clock in the afternoon? A. Yes, sir.

Q. What did you do? A. Where?

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Q. Where you went at three o'clock in the afternoon? A. I seen Mugsy Cohen.

Q. Who is Mugsy Cohen? A. A car thief and a radio crook.

Q. Did you talk with Mugsy Cohen? A. Yes, sir.

Q. What did you and Mugsy Cohen do? A. I asked him—

Mr. Rosenthal: I object to any conversation.

Mr. Turkus: I consent to it.

2132

Q. Bernstein, there are rules of evidence and you cannot tell us under the rules what you and Mugsy said to each other, but you can tell us what you did. You tell us what you and Mugsy Cohen, this car and radio thief, did?

Mr. Talley: I object to testimony as to what they did in the absence of any of these defendants as remote, as immaterial and irrelevant, just as immaterial and irrelevant as what they said, as not binding upon any of these defendants.

2133

The Court: Overruled.

Mr. Talley: Exception.

Q. Do you understand the question? A. Yes, sir.

Q. Now tell us. A. About one o'clock in the morning I went with Mugsy to steal a car.

Mr. Talley: Just a minute. Went to Mugsy?

Mr. Turkus: Went with Mugsy.

2134

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The Witness: Went in the morning.

Q. Where did you go looking for a car? A. Around the East Flatbush section.

Q. What kind of a car were you looking for?

A. Any kind of car as long as it had a radio and a good running car.

Q. After looking for that kind of a car, did you finally come across one? A. Yes, sir.

Q. Where was that? A. Around Lefferts Avenue.

2135

Q. I show you People's Exhibit 20 in evidence, and ask you if you recognize and can identify the area set forth on that picture? A. Yes, around here somewhere was an empty lot at that time, too.

Q. You recognize the picture? A. Yes, sir.

Q. Hold the picture in your hand and tell us when you and Mugsy were looking for the car where you found the car? A. Somewhere near this here lamppost.

Q. When you say the lamppost, do you mean across the way from the apartment house shown on that exhibit, People's Exhibit 20 in evidence? A. Yes, sir.

2136

Mr. Talley: May I look at that photograph, please?

Mr. Turkus: Yes.

Mr. Talley: Where did he point out?

Mr. Turkus: The lamppost on People's Exhibit 20, the one put in evidence by Mr. Kaufman.

Q. About what time was this that you were with Mugsy when you saw the particular car? A. About two o'clock in the morning.

Q. What morning? A. Saturday morning.

Q. What kind of a car was it that you saw parked there on People's Exhibit 20 as you told the jury? A. A Chevrolet car, two door, black.

Q. Describe to the jury the manner in which the car was stolen and how the doors were opened? A. Mugsy Cohen broke first the window. Then he opened up the door. Then he took a jump-box and picked up the hood. Then he started it. I don't know how he started it but he started it.

2138

Q. The jury don't know about a jump-box. What is that? A. That is to start a car up, a hot box.

Q. To start a car up when you have not got what? A. A key.

Q. Who started the Chevrolet now? A. Mugsy Cohen.

Q. Now that Mugsy Cohen has got the stolen car started, what happened? A. I told him to follow me to the drop.

Q. Did you drive over to the drop? A. Yes, sir.

Q. The garage "2" on People's Exhibit 28 in evidence? A. Let's take a look at it. (Looking at exhibit.) Yes, sir.

2139

Q. What was done with the stolen Chevrolet car? A. Mugsy Cohen took the radio out of the car.

Q. When the radio was removed from the car, where was the car put? A. The car was in the garage when Mugsy Cohen took the radio out of the car.

Q. Was it in the garage, People's Exhibit 28 you just looked at? A. Yes, sir.

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Q. The place you called the "drop"? A. Yes, sir.

Q. After Mugsy removed the radio from the car what was done? A. I drove him off.

Q. Did he have the radio with him? A. Yes, sir.

Q. Did you lock the garage with the lock that you had put on? A. Yes, sir.

2141

Q. Now that you had the stolen car in the "drop," what was the next thing you did with regard to the car? A. The next morning I went back to the garage. I took the handle off the car and went—

Q. When you say "the next morning," are you still talking about Saturday morning? A. No, sir, that was Sunday morning.

Q. Are you sure? A. Saturday morning.

Mr. Rosenthal: I object.

2142

Q. Now that you had the handle removed off the stolen Chevrolet, what did you do? A. I went to a locksmith on Rockaway between Livonia and Dumont Avenue to make up a key.

Q. Did you have a key made? A. Yes, sir.

Q. After the key was made, did you return to the "drop"? A. Yes, sir.

Q. What did you do with the key? A. I put first the handle back and then I tried with the key to see if it fit the ignition to start the car.

Q. Did the key you had made fit the handle, fit the ignition switch? A. Yes, sir.

Q. Now, you had a key for the stolen car in the drop; what was the next thing you did? A. I had an appointment for four o'clock with Louis

Capone and Harry Strauss at Sackman and Livonia.

Q. Did you keep the appointment with Louis Capone and Harry Strauss? A. Yes, sir.

Q. Did they keep the appointment with you? A. Yes, sir.

Q. Did you meet them there? A. Yes, sir, in the coffee pot.

Q. Did you talk together? A. Yes, sir.

Q. Tell the jury what was said. A. Louis Capone asked me if I got the car in the "drop." I said, "Yes, sir." Then he asked me—

Q. Did you say "Yes, sir," to Louis Capone? A. Yes, sir. Then he asked me what kind of a car it was. I told him a two-door Chevrolet, black car. He gave me an argument, saying, "Why did you get a two-door car?"

Q. What did he say when you say he gave you an argument? A. He said, "What the hell is the matter with you? Why did you get a two-door car?"

Q. What was the matter with a two-door car?

Mr. Rosenthal: I object.

The Court: Objection sustained.

Q. After the argument ended about you getting a two-door car, what else was said? A. Louis Capone said, "Come on, I will show you the job you have got to do."

Q. Then what happened? A. Louis Capone drove my car and showed me the route.

Q. Let me ask you this: Where did Louis Capone drive your car? A. He drove—

Q. Where to, first. A. First he showed me—

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first he drove to Bradford and Blake, near the park.

Q. What was the name of that park? A. I don't know the name of the park.

Q. When he got you to the park at Bradford and Blake, what did he say to you? A. At Bradford and Blake he said, "Now watch,—this is going to be your job,—what to do."

2147

Q. Now, when he said that to you, what did Capone do? A. He drove my car and started showing me Rosen's candy store.

Q. I show you Exhibit 2-A in evidence and ask you— A. (Interrupting) Pardon me, Mr. Turkus, I did not know at that time his name was Rosen.

Q. He just showed you the candy store? A. Yes, sir.

By the Court:

2148

Q. I want to get this straight. What was the rest of that answer? A. "Watch, this is going to be your job, what to do, how to drive."

Q. When you got to Bradford and Blake? A. Yes, sir.

Q. What did he say there? A. He said, "Now watch, this is the job what you are going to do; I am going to show you the route."

By Mr. Turkus:

Q. Let us go with this slowly, so we are sure we understand each other. After he told you what you have just related to the Judge and the jury, did he keep on driving your car? A. Yes, sir.

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Q. Did he drive your car into Sutter Avenue?

A. Yes, sir.

Mr. Rosenthal: I object to anything leading or suggestive.

Q. Tell us the street into which he drove your car. A. On Bradford and Blakc he made a left turn.

Q. A left turn into where? A. Into Sutter Avenue, that was a left turn.

Q. Turn around and look at that big picture in back of you. Look at it carefully and see if you recognize it. A. Yes, here (indicating).

2150

Q. First, tell us, do you recognize that picture? A. Yes, sir.

Q. What is it a picture of? A. It is the street where the candy store is.

Q. What is the number of that exhibit? A. (Court Attendant) People's 25 in evidence.

Q. Does People's Exhibit 25 in evidence show the corner around which Capone drove the car and passed the candy store? A. This way (indicating); he made a left turn.

2151

Mr. Turkus: Indicating, facing the photograph, from the left-hand side past the luncheonette or soda store down Sutter in a westerly direction, the direction of Wyona Street.

Q. When Capone was driving your car down Sutter Avenue and past the candy store, did he say anything to you? A. He said, "Now, watch very good, because this is the way you got to drive." When he showed me the candy store

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he said, "Here is where somebody is going to be killed."

Q. Look at People's Exhibit 25 in evidence first, the one in back of you, and show us where that store was that he was at. A. The candy store here (indicating).

Mr. Turkus: Indicating the candy store 725 Sutter Avenue.

2153

Q. Take a look at this picture, People's Exhibit 2-A in evidence, the one of handy size for handling, and see if you recognize the store. A. Yes, sir.

Q. Is that the candy store? A. Yes, sir.

Q. Now, after Capone drove you past that candy store on Sutter Avenue which you have just identified, where did he drive your car? A. He made a left turn on Wyona and Sutter.

Q. Yes, and from there where did he go? A. A left turn on Wyona and Sutter—Wyona and Blake.

2154

Q. Continue with the route. A. On Wyona and Blake he made a right turn into Pennsylvania Avenue to Blake. Pennsylvania and Blake I made a left turn to Pennsylvania and Dumont. On Pennsylvania and Dumont I made a right turn on Dumont Avenue and went straight down to Snediker and Dumont. On Snediker and Dumont I made a left turn into Snediker and Livonia. On Snediker and Livonia I made a right turn straight to Livonia, and on Livonia I made a right turn at VanSinderen and Livonia, where the station is.

Q. How far up VanSinderen Avenue was the

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car driven on this route you were being instructed in? A. What do you mean?

Mr. Rosenthal: I object to the form of the question.

The Court: Objection overruled.

Mr. Turkus: I will withdraw it, your Honor, so there will be no dispute.

Q. Who was driving the car at that time you are talking about? A. All the time, Louis Capone was driving my car.

2156

Q. Where did he bring that car to a stop? A. About 15 or 20 feet from Livonia Avenue, VanSinderen and Livonia.

Q. I show you People's Exhibit 15 in evidence and I ask you if you recognize and identify that exhibit. A. Yes, sir, I remember this here news stand, but the car was parked a little further.

Q. According to your recollection? A. Yes, sir.

Q. I show you People's Exhibit 13 in evidence and ask you if you recognize and can identify that exhibit. A. Yes, sir.

2157

Q. Now, does that show approximately where Louis Capone stopped your car? A. Around there some place.

Q. Now, when you got to that point on VanSinderen Avenue off Livonia, what if anything did Louis Capone say to you? A. He showed me the route seven or eight times; he went back again.

Q. Before he went over the route with you again and again, what did he tell you the first time you came to VanSinderen and Livonia? A. "Now, are you sure—"

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Mr. Rosenthal (interrupting): I object to it—leading and suggestive. This witness said nothing about him saying anything, and he directed his attention after the witness said he went over this route seven or eight times. Then Mr. Turkus said, "What did he say to you the first time you arrived there?" That is leading and suggestive.

2159

Mr. Turkus: How else can you ask that question?

Mr. Rosenthal: I will tell you if you want to know the proper way.

The Court: You can ask him whether or not Capone did say anything to him.

Mr. Rosenthal: Does your Honor rule on my objection?

Mr. Talley: I object to this entire line as having no bearing whatever on the defendant Weiss.

The Court: Objection overruled.

Mr. Talley and Mr. Rosenthal: Exception.

2160

Q. Have you followed the Judge's question?

A. Yes, sir.

Q. Do you understand what he asked you? A. Yes, sir. He said, "Are you sure you know the route?"

Q. I want to ask you this: You told us that Capone stopped your car at a point near where the car is on People's Exhibit 13 in evidence when you first went over the route. A. Yes, sir.

Q. When he stopped your car there the first time you went over the route, did he say any-

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thing to you? A. He said, "This is the place where you drop the car off."

Mr. Turkus: That is all I wanted to hear.

Mr. Rosenthal: That is an improper observation, and I move to strike it out.

Mr. Turkus: If it is improper, I move that it be stricken out.

The Court: Proceed.

Q. How many times did you and Capone go over the route? A. About seven or eight times.

2162

Q. Did you learn the route by heart? A. Yes, sir.

Q. After that where did you go? Where did you and Capone go? A. Went back to Sackman and Livonia Avenues.

Q. What was done with your car? A. Louis Capone held my car all the time.

Q. When you got back to Sackman and Livonia, was there any talk between you and Capone? A. Harry Strauss came over, then Louis Capone told me—

2163

Mr. Talley: I object, if your Honor please, as far as the defendant Weiss is concerned, to any conversation.

The Court: Overruled.

Mr. Talley: Exception.

Q. Continue with your answer. Harry Strauss came over and Louis Capone told you what? A. He told me to go over and steal plates, to make sure to take plates where the car will not be missed.

2164

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Q. Did he say anything else? A. Yes.

Q. What else? A. He said, "After you get the plates from the car to put it on the hot car and drive the car over about 10:30 at night to Sackman and Livonia Avenue."

Q. After Capone told you to steal the plates as you told the jury, did he keep your car? A. Yes, sir.

Q. After you got that direction from Capone, what did you do?

2165

Mr. Rosenthal: I object to the form of the question.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I took a flashlight out of the car, a screw driver, and a pair of pliers.

Q. Out of which car? A. Out of my own car, and a pair of gloves.

Q. When you had the equipment in your possession, what did you do? A. I went to go to steal plates.

2166

Q. Where did you go? A. I went around somewhere, around East Flatbush neighborhood.

Q. Would you recognize a picture of the neighborhood where you went? A. Yes, sir.

Q. I show you this exhibit, People's Exhibit 21 in evidence, and ask you if you can recognize and identify it. A. Yes, sir, I remember the lot in Newport Street here (indicating).

Q. Is that where you went to steal the plates? A. Yes, sir.

Q. When you walked through Newport Street, as shown on People's Exhibit 21, in what part

did you walk? A. Let me have the picture, please.

Q. Hold it up there. A. I walked this here way (indicating).

Q. When you say "This here way," what do you mean? A. This way (indicating). Across the sidewalk, in the center of the picture, on Newport Street.

Q. Did you walk in behind the houses where there are a row of garages on that photograph?

A. Lots of garages; more than where I had the "drop." More garages than the "drop" had.

2168

Q. When you got back there what did you do? A. I broke the lock and I went into the garage. I took off a pair of plates from a car.

Q. After you removed the plates from the car in the garage, the private garage indicated by you in People's Exhibit 21 in evidence, what did you do with the plates? A. I took the plates and I went over to the "drop" to put it on the hot car. Then I took off—

Q. (interrupting) Before that—Just a minute. When you took the plates off, how did you get them over to the "drop"? A. I put them in a paper and took a cab.

2169

Q. Did you drive to the "drop"? A. Yes, sir, with a taxicab, a block away from there.

Q. From the place where the taxicab left you off, did you walk with the plates to the "drop"? A. Yes, sir.

Q. When you got— A. (interrupting) It was packed up in a newspaper.

Q. When you got to the "drop" what did you do? A. I went into the garage and took off the plates from the car that was on and put on the

2170

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plates what I stole. Then I broke up the plates. I went out and broke up the old plates from the car and threw them in some sewer or ash can, I don't remember.

Q. So you switched, then, the plates you had stolen from around Newport Street onto the stolen car? A. Yes, sir.

Q. You broke up the plates that were originally on the stolen car when you stole it with Mugsy Cohen? A. Yes, sir.

2171

Q. Now, putting the stolen plates that had been secured from Newport Street onto the stolen car, what did you do after that? A. I hung around until about a quarter after ten, because I had an appointment to bring the car on Sackman and Livonia Avenue.

Q. Who did you have the appointment with? A. I had the appointment with Louis Capone and Harry Strauss.

Q. Did you drive the stolen car to the place of appointment? A. Yes, sir.

Q. Where did you park it? A. Between Sackman and Livonia, near Riverdale.

2172

Mr. Talley: Do you mean the night or the morning?

Mr. Turkus: He just told you ten o'clock at night.

Mr. Klein: A quarter after ten at night.

Q. After you parked this stolen car, what did you do? A. What did I do? I got out of the car.

Q. Where did you go? A. I went near the coal store.

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2173

Q. Where was that? A. Sackman and Livonia.

Q. Did you see anybody you knew on the corner? A. Yes, sir.

Q. Who did you see? A. Mendy Weiss, Louis Capone, Farvel Cohen, Harry Strauss, and Jimmy Ferraco.

Q. When you saw them, what were they doing? A. They were talking.

Q. Did you walk over to them? A. Yes, sir.

Q. What happened then? A. I went to Mendy Weiss, and Harry Strauss went over to take a look at the car with me.

2174

Q. How far from that corner had you parked the stolen car? A. About—there were a lot of stores, about two or three houses, I don't know how far that is.

Q. Who went with you to inspect the stolen car? A. Mendy Weiss, Harry Strauss, and Louis Capone.

Q. What do you and your associates call a stolen car? What other name do you call it?

Mr. Rosenthal: Objected to.

The Witness: A hot car.

2175

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. Did you say a hot car? A. Yes, sir.

Q. What happened when the car was being inspected? A. Mendy Weiss started hollering at me. He said, "What the hell is the matter with you? Why did you get a two-door car for?" He said, "You know for a job like this you need a four-door car." He said, "The next job you get orders you steal a four-door car."

2176

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Q. Did you answer him? A. I kept quiet.

Q. What happened after that? A. After that Mendy Weiss told me to take— Oh, after that somebody brought a package over to Harry Strauss and Harry Strauss, when he brought the package over to Harry Strauss, Harry Strauss gave it to me and said to me, "There are the guns in that. Put them in the compartment of the car."

2177

Q. Did you put that package in the glove compartment of the car? A. Yes, sir.

Q. Was that the package that Strauss told you had the guns in it? A. Yes, sir.

Q. After the package of guns had been put into this hot car, what happened? A. Mendy Weiss told me to take the car and bring it where Louis Capone showed me where, on Bradford and Blake, in the middle of the block.

Q. That is not quite clear as you say it. Tell us what was said. A. Mendy Weiss told me to take the stolen car and park it on Bradford and Blake near Sutter in the middle of the block; put the car there and leave him in the little park on Blake and Bradford.

2178

Q. How far away was the little park from the candy store? A. That was Blake Avenue, and the candy store was on Sutter.

Q. How far apart are they? A. A block and a half.

Q. How far from the candy store were you directed to park the hot car? A. In the center of the block on Bradford Street.

Q. Look at that picture in back of you, People's Exhibit 25 in evidence, and show us which direction on the picture that block is where you

parked the car? A. It is here (indicating); Blake goes all the way down.

Q. Down from Artie's? A. The ice cream parlor.

Q. Is that also the direction in which that little park is? A. Yes, sir.

Q. Did you park the car where you were told? A. Yes, sir.

Q. Did you go to meet them in the little park? A. Yes, sir.

Q. Who did you meet in the little park? A. I met Mendy Weiss, Harry Strauss, Louis Capone, Jimmy Ferraco, and Farvel Cohen,—no, not Louis Capone.

2180

Q. Louis Capone was not there? A. No, sir.

Q. So you met Weiss, Strauss, Farvel Cohen, and Jimmy Ferraco? A. Yes, sir.

Q. When you got there, what did they do? That is, Weiss, Strauss, Farvel Cohen, and Jimmy Ferraco? A. They were talking, and Mendy Weiss told me to bring the package of guns into the park.

Q. Did you return to the car? A. Yes, sir.

Q. Did you take the package of guns out of the glove compartment? A. Yes, sir.

2181

Q. Did you bring them back to the little park? A. Yes, sir.

Q. What did you do with the package? A. I gave it to Mendy Weiss.

Q. What was done with the package? A. Mendy Weiss opened up the package and I seen the guns in the package. He gave one to Harry Strauss and Jimmy Ferraco and he took one for himself with extra pills. The bullets were

2182

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not in the gun, and I saw him put in the pills in the gun.

Q. What do you mean by "pills," bullets?

A. Bullets were not in the gun.

Q. Who filled the guns with pills or bullets?

A. Mendy Weiss.

Q. After he got through putting the pills in the gun what did he do? A. He gave Harry Strauss one gun, Jimmy Ferraco one gun, and he took one for himself, and he held the extra bullets with it.

2183

Q. Then what happened? A. Then what happened? Mendy Weiss said he is going over to take a look at the store and see how things are, and if it looks good.

Q. Which way did he walk? A. He walked straight down Bradford Street.

Q. In what direction? A. Toward Sutter Avenue.

Q. How long did he stay away? A. About 15 to 20 minutes.

Q. Did he come back? A. Yes, sir.

2184

Q. When he came back, what did Mendy Weiss do? A. He said to Harry Strauss, "Come on, you take a look. You take a walk and see how you like it," and both of them left, going in the same direction.

Q. Walking in the same direction? A. Yes, sir.

Q. How long was Mendy Weiss gone that time? A. Fifteen to twenty minutes also.

Q. Did Weiss and Pittsburgh Phil Strauss come back together? A. Yes, sir.

Q. When they came back to the little park, did they talk? A. Yes, sir.

Q. What did they say? A. Mendy Weiss said to Harry Strauss, "How do you like it?" and Harry Strauss said, "I am afraid of that ice cream parlor on Sutter Avenue; I am liable to be made."

Q. What does "being made" indicate? A. Recognized.

Q. Is that an expression, "being made," is that the expression you and your associates use for identification? A. Yes, sir.

Q. If you are identified, that is being "made?" A. Yes, sir.

2186

Q. You got to the point when I stopped you where you said that Strauss said he was afraid of being "made" in the ice cream parlor. Now what else was said? A. Then Mendy Weiss said to Harry Strauss, "I will tell you what we will do, we will grab him in the morning when he opens up the store and make a good job out of it so you don't have to worry."

Q. After that was said, what was done in reference to the guns? A. Mendy Weiss told him —gave me orders to hold the guns and put them in the car.

2187

Q. Did he say anything else, Mendy Weiss? A. Yes, sir, he gave me the address of a house, and then he told me to pull the car back into the garage and meet him up at this house. He wrote the address on a piece of paper.

Q. Mendy Weiss himself wrote that address on a piece of paper? A. Yes, sir.

Q. Now, after you got the address from Mendy Weiss, what did you do? A. I took the car.

2188

Sol Bernstein—For People—Direct

Q. What car are you talking about? A. The hot car. I took the car and pulled it into the garage where the drop was. Then I took a cab and went where the address was that he told me, Mendy Weiss.

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit U for identification.)

2189

Q. Can you remember where that house was, the address of which you had on a piece of paper, which Mendy Weiss gave you, where was that house? A. On Eastern Parkway.

Q. Take a look at People's Exhibit U for identification and see if you can recognize and identify that exhibit. A. Yes, sir.

Q. What does it show? A. That is the house where it was written the number down where Mendy Weiss told me to come to.

2190

Mr. Turkus: I offer it in evidence.

Mr. Rosenthal: I object to it on behalf of the defendant Capone.

Mr. Talley: I object to it on behalf of defendant Weiss.

Mr. Barshay: Objected to on behalf of defendant Buchalter.

The Court: Objection overruled.

Defense Counsel: Exception.

(Received and marked People's Exhibit 29 in evidence.)

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2191

Mr. Turkus: May that be passed to the jury?

The Court: Yes.

Q. Did you go to that apartment house on People's Exhibit 29 in evidence? A. Yes, sir.

Q. Where in the apartment house did you go, if you remember? A. Oh, I don't remember.

Q. Was it some apartment? A. Yes, sir.

Q. Did you go into the apartment? A. Yes, sir.

2192

Q. Who did you find in the apartment? A. I found Mendy Weiss, Harry Strauss, Farvel Cohen, and Jimmy Ferraco.

Q. When you found them there what were they doing? A. They were eating.

Q. What did you do, did you eat with them? A. They gave me a sandwich.

Q. Do you know whose apartment it was? A. When I got up there I knew; I did not know at first.

Q. Whose apartment was it? A. Farvel Cohen's.

2193

Q. After you got through eating the sandwich they gave you, were you told anything? A. Yes, sir, they told me to get some sleep, because "You will have to get up at five in the morning."

Q. Where did you sleep? A. In Farvel's house.

Q. What part of the house or apartment? A. In the living room, there were rugs there.

Q. Where did you sleep? A. On the rugs.

Q. Who woke you up? A. Mendy Weiss.

Q. At what time? A. I think it was about five o'clock in the morning.

2194

Sol Bernstein—For People—Direct

Q. When Mendy Weiss woke you up what did he tell you? A. He told me to go and get the car and meet them at the same place in the park and take out the guns out of the car and bring them into the park.

Q. After Mendy Weiss told you that, what did you do? A. I done what he told me.

Q. Did you go to the drop? A. Yes, sir.

Q. Did you get the hot car? A. Yes, sir.

2195

Q. Where did you drive it? A. I drove it to Bradford between Blake and Sutter.

Q. You mean Bradford between Blake and Sutter? A. Yes, sir.

Q. Did you park the hot car there? A. Yes, sir.

Q. What did you do after you parked the hot car? A. I took the guns out of the car and brought them into the park.

Q. Who did you meet in the park? A. Mendy Weiss, Harry Strauss, Jimmy Ferraco.

Q. Did you at that time see either Farvel Cohen or Louis Capone? A. No, sir.

2196

Q. What did you do with the guns? A. I gave them to Mendy Weiss, and the extra bullets.

Q. What did Weiss do with the guns? A. He gave one to Harry Strauss and Jimmy Ferraco.

Q. What about the third one? A. He took it himself.

Q. After the guns were parceled out that way, what happened? A. Mendy Weiss said, "Come on."

Q. Who did he say "come on" to? A. To all of us.

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2197

Q. After Mendy Weiss said, "Come on," where did all of you go? A. We went to Wyona and Belmont, an apartment house, in the hallway.

Mr. Turkus: I ask this photograph be marked for identification.

(Received and marked People's Exhibit V for identification.)

Q. You say Mendy Weiss said, "Come on" to all of you and you all went to an apartment house on Wyona Street? A. Wyona Street near Belmont.

2198

Q. How far away was that from Sutter Avenue? A. About a block.

Q. Look at People's Exhibit V for identification and tell us, can you recognize and identify that exhibit? A. Yes, sir, there was another house like that. That is the house.

Q. Is that substantially the way that house and the rest of the houses pictured on People's Exhibit V for identification looked at that time? A. Yes, sir.

2199

Mr. Turkus: I offer the photo in evidence.

Mr. Barshay: Same objection.

Mr. Rosenthal: I object to its materiality.

Mr. Cuff: Same objection on behalf of Weiss.

Mr. Rosenthal: It is not necessary and has no evidentiary value.

2200

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The Court: Objection overruled.

Defense Counsel: Exception.

(Received and marked People's Exhibit 30.)

Q. Now, point out the house that Mendy Weiss, Harry Strauss, Ferraco, and yourself walked to, on People's Exhibit 30 in evidence.

A. This one here (indicating).

2201

Mr. Turkus: Indicating apartment house on the right-hand side of People's Exhibit 30 as you look at the exhibit.

The Witness: Yes, sir.

Mr. Turkus: May it be exhibited to the jury?

The Court: Yes.

Q. When the four of you got to that apartment house you have indicated to the jury on People's Exhibit 30, where did the four of you go when you got to that house? A. We all stood in the house; we all stood in the hallway.

2202

Q. In the hallway of that apartment building?

A. Yes, sir.

Q. While standing in the hallway of the apartment building did Mendy Weiss say anything?

A. Yes, sir. Mendy Weiss said, "Over here we can see when Rosen comes out of the house." At that time I did not know it was Rosen's name.

Q. Is that the first time you hear dRosen's name? A. I never heard of Rosen's name.

Q. Tell us what he said when you were stand-

ing in the hallway. A. He said, "Look, it is here, if that rat should come out of the house."

Q. If the "rat" should come out of the house where? A. He looked out and said, "This is where we can see the rat coming out of the house."

Q. How long did the four of you wait in the house, the vestibule of that apartment house? A. About an hour.

Q. During that hour what were the four of you doing? A. Smoking cigarettes, and Mendy Weiss was looking out.

2204

Q. In which direction was he looking out? A. I can show you on the picture.

Q. All right, show us on the picture which way he was looking. A. Through this first door (indicating).

Q. He was looking into the little row of houses on the left-hand side? A. He was looking at this house over here (indicating).

Mr. Turkus: It will be impossible for me to conclude the testimony of this witness within the time prescribed for recess.

2205

Mr. Rosenthal: May I suggest we complete the direct examination? We lost considerable time today.

Mr. Turkus: I have as much testimony to put in as I have put in already.

Mr. Rosenthal: We will stay with you.

Mr. Turkus: I expected that.

Mr. Rosenthal: Then you are not disappointed.

2206

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Mr. Turkus: You asked for a recess at four o'clock, and now I am asking.

Mr. Cuff: We have not asked for any recess at four o'clock.

Mr. Turkus: Yes, that was the arrangement you made with the Court.

Mr. Cuff: I did not.

Mr. Turkus: So you could confer with your client.

Mr. Cuff: We did not.

2207

The Court: We will look at the record. That arrangement was made in the Judge's chambers in the absence of the press and the jury. When counsel says it was not made, the Court states it was made, and that a stenographer was there and made a record of it. It was made to enable counsel for defense to have an interview with their clients in the pen daily before removal to the House of Detention, and that it would give time for the defendants to arrive at their respective institutions in time for their meal.

2208

Mr. Cuff: That was the Court's own suggestion, I think.

The Court: The record speaks for itself. When the Court speaks, there will be no contradiction in matters which occurred, even when the press was not present. The Court under the circumstances thinks it advisable to take a recess now.

(Addressing the jury) Gentlemen, please do not discuss the case nor let anybody talk to you about it; keep your minds

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open; remember the other instructions. First, the witness will be taken away.

Mr. Rosenthal: May I, before you take him away, ask the Court to instruct this witness he is not to be interviewed by anybody, or speak about the case in the recess until Monday.

The Court: The Court has no jurisdiction to do that.

Mr. Rosenthal: I respectfully except.

The Court: Now the jury may leave.

2210

Recess until Monday morning at 10 o'clock.

Now the defendants are remanded.

(Recess taken until Monday, October 27, 1941,
at 10:00 A. M.)

Brooklyn, N. Y., October 27, 1941.

TRIAL RESUMED

2211

SOL BERNSTEIN, a witness for the People, resumed the stand and testified further as follows:

Mr. Turkus: At this time I respectfully offer to be marked as Exhibit 25-A, the original small-sized photograph which corresponds to and is an exact duplicate of People's 25 in evidence, except for its size. This is for convenience in handling by the jury.

2212

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(Received without objection and marked People's Exhibit 25-A in evidence.)

Direct examination by Mr. Turkus (continued):

Q. Just before recess on Friday you spoke of certain transactions that took place in the small park a short distance from the candy store at 725 Sutter Avenue, do you remember? A. Yes, sir.

2213

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit W for identification.)

Q. I show you People's Exhibit W for identification and ask you if that indicates the corner of the park at Bradford and Blake Avenues. A. Yes, sir.

Q. Is that the park you spoke about in your testimony on Friday? A. Yes, sir.

2214

Mr. Turkus: I offer it in evidence.

(Received without objection and marked People's Exhibit 31.)

Mr. Turkus: May People's Exhibit 31 be exhibited to the jury?

The Court: Yes.

Q. How far away is that park on People's Exhibit 31 from the candy store, 725 Sutter Avenue? A. One block away.

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2215

Q. At recess, Friday, Bernstein, you told the jury at the concluding portion of it, that you, Weiss, and others were waiting at an apartment house set forth on People's Exhibit 30 in evidence. A. Yes, sir.

Q. That is where you said Weiss said, "This is where I can see the rat coming out of the house"? A. Yes, sir.

Q. How long did you wait at that apartment house with Weiss and the others? A. For about three-quarters of an hour.

Q. Now, after that wait— Question withdrawn.

2216

Q. During that wait, what were you doing there, you and the others? A. Smoking cigarettes.

Q. After that wait of approximately three-quarters of an hour, what happened? A. Mendy Weiss went out.

Q. Where did he go? A. I don't know where he went, I think across the street from the house.

Mr. Cuff: I move to strike out all except, "I don't know where he went."

2217

The Court: Strike it out.

Q. How long was he gone? A. A few minutes.

Q. When he came back what took place? A. He said, "That rat just came out of the house, and I think he is going to open up the store."

Q. What happened after that, or what was said? A. For a few minutes he stood in the hallway and then he said, "I am going over to take a look and see how everything is."

Q. What did he do after that, after he said,

2218

Sol Bernstein—For People—Direct

"I am going to take a look," where did he go?

A. He went toward the store.

Q. How far away from that apartment house in which you, Weiss, and the others were laying in wait for the person whom Weiss described as a "rat," was the candy store?

Mr. Cuff: I object to the form of the question.

The Witness: I don't know what he means.

2219

The Court: I did not understand the question.

Mr. Turkus: Question withdrawn.

Q. You said you were waiting with Weiss and the others at People's Exhibit 30. That is correct? A. Yes.

Q. That Weiss was looking across the street, at a little row of houses opposite. A. I don't know which house he was looking at; he was looking across the street.

Q. In the direction of these little houses? A. Towards Sutter.

2220

Q. How far away is that location from the candy store at No. 725 Sutter Avenue? A. Around the corner.

Q. After Weiss said, in substance, that he was going to take a look, did he walk down Wyona Street in the direction of the candy store? A. Yes, sir.

Q. Did he come back? A. Yes, sir.

Q. After how long an interval of time? A. About five or ten minutes, I am not sure.

Q. When he came back to the group did he say anything? A. Yes, sir.

Q. What did he say? A. He said to me, "Go over, get the car, and stop it in front of Rosen's store, and make sure the motor is running."

Q. At that time where was the car parked, that is, that hot car? A. Bradford and Blake, near Sutter.

Q. How far away from the candy store was the car parked? A. Around the corner.

Q. Did you go for the hot car? A. Yes, sir.

Q. Where did Weiss and the others go? A. They were in the hallway when I left.

Q. Who remained in the hallway when you left? A. Mendy Weiss, Harry Strauss, and Jimmy Ferraco.

2222

Q. Did you go to the place where you had left the hot car? A. Yes, sir.

Q. Did you find it there? A. Yes, sir.

Q. Tell the jury what you did. A. I then took the car, pulled it in front of Rosen's store, like he told me, with the motor running.

Q. When you were behind the wheel of this hot car with the motor running, in front of Rosen's store, what did you see happen? A. Before I pulled over with the car I saw Mendy Weiss, Harry Strauss, and Jimmy Ferraco walk toward the store.

2223

Q. When they walked toward the store, did you stay behind the wheel of that hot car with the engine running? A. Yes, sir.

Q. What happened next? A. I saw Mendy Weiss and Harry Strauss walk in the store and Jimmy Ferraco stood outside.

Q. Then what happened? A. I heard a lot of shots: Mendy Weiss and Harry Strauss came running out of the store and they ran into the car with Jimmy Ferraco.

2224

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Q. Tell us how they got into this two-door hot car. A. I opened up the door, picked up the seat, because it was a two-door car.

Q. Now, you picked up the front seat? A. Yes, sir.

Q. Was that to make it easier for the three of them to climb in? A. Yes, sir.

Q. After the three climbed in this hot car, with you behind the wheel, with the engine running, what happened? A. I started on the route Lou Capone showed me to.

2225

Mr. Rosenthal: I move to strike it out.

The Court: Motion denied.

Mr. Rosenthal: Exception.

Q. When you were in the car, did Weiss and Strauss say anything while you were driving it on that route? A. Yes, sir.

Q. What was it? A. They started hollering, "Turn here," "Turn there." I did not pay any attention to that because Louis Capone showed me the route seven or eight times.

2226

Mr. Rosenthal: I object.

Mr. Turkus: I consent that after "because" be stricken out.

Mr. Rosenthal: I object and move that all after "because" be stricken out.

The Court: Strike it out.

Mr. Rosenthal: If your Honor please, I ask your Honor to instruct the jury to disregard that statement.

The Court: Members of the jury, throughout the trial, when the Court strikes out any part of an answer, that is

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2227

because the rules of evidence require it. It is then your duty to disregard the part that the Court strikes out.

By Mr. Turkus:

Q. Answer these questions yes or no: When Weiss and Strauss were hollering, "Turn this way," "Turn that way,"—yes or no—did you do it? A. No, sir.

Q. Which course or route did you follow in the get-away from the store; which way did you go on the get-away; what route did you follow? A. I made a left turn on Wyona—

2228

Q. Do not describe it that way. I do not want to go all through that route.

Mr. Rosenthal: I object to any interruption of the witness when he is answering a question.

Q. Continue. A. I made a left turn on Wyona Street—

2229

Mr. Rosenthal: I object to the sardonic grin on Mr. Klein's face when counsel for the defendant gets up and objects. It may be humorous to him, but it is not to me. I consider it my duty to get up when I consider a question asked is being answered and interrupted by the District Attorney. I ask your Honor to admonish counsel not to be continually grinning when counsel for the defense gets up to make an objection.

Mr. Turkus: I remember Mr. Rosen-

2230

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that telling us once before that he could not control the facial expressions of counsel, or counsel's expression on his face. Mr. Klein is not here to be sardonic.

The Court: Just a minute. I do not like to break into this narrative. I did not notice the grin because I was busy. I hope it did not happen. Now, please proceed.

Mr. Rosenthal: I respectfully except.

2231

By Mr. Turkus:

Q. Did you then pursue the route that Capone had shown you the day before?

Mr. Rosenthal: I object to the question.

The Court: He has already said so.

Mr. Turkus: I will not continue it then.

Q. Now, where was this hot car stopped? A. Right in front of the store.

2232

Q. No, no. I am talking now after you got away. A. Van Sinderen and Livonia Avenues.

Q. I show you People's Exhibit 13 in evidence and ask you if you can indicate thereon, approximately, where you stopped the hot car. A. Yes, sir.

Q. Where? A. Over here (indicating).

Mr. Turkus: Indicating the car on that picture.

The Witness: Yes, sir.

Q. In going around, stopping the car at that point, did you go around the intersection indi-

cated on People's Exhibit 15 in evidence, also showing the candy stand, the I.R.T., the B.M.T., and the railroad bridge? A. Yes, sir, I went this way, (indicating); we passed the stairway.

Q. When you brought the hot car to a stop at the point you have indicated, namely, as set forth on People's Exhibit 13 in evidence, what happened at that point? A. I took the key out of the car, and they all walked out.

Q. When you say, "They all walked out," who walked out? A. Mendy Weiss, Harry Strauss, Jimmy Ferraco, and myself.

2234

Q. Where did you walk to, Bernstein? A. We walked past the subway station.

Q. Is that subway station indicated on the exhibit, People's Exhibit 15? A. Yes, sir, over here to the right (indicating).

Q. Did the four of you walk past the stand? A. Yes, sir.

Q. Up where? A. Up the steps and on the trestle.

Q. Up the steps to what? A. To the bridge, all the way up the steps and up to the bridge.

Q. I show you People's Exhibit 16 in evidence and ask you if you recognize that photograph. A. Yes, sir.

2235

Q. Tell the jury if that is the bridge you walked over with those men. A. Yes, sir.

Q. Take a look at People's Exhibit 17 in evidence and tell us if you recognize that. A. Yes, sir, that is going down to Junius Street.

Q. Is that where you and Weiss and Strauss and Ferraco walked down? A. Yes, sir.

Q. Look at People's Exhibit 17 and tell us, when you walked down with these four men, if

2236

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anything occurred while you were going down the stairs going to Junius Street side of this railroad track. A. This is 17. Yes, sir, I saw Louis Capone in my car and Farvel Cohen with his car.

Q. Where did you see Louis Capone with your car, where on People's Exhibit 17 are you? A. Across the street, over here (indicating); I will show you on the picture. Right over here (indicating).

2237

Q. What is on that side of the picture? A. The subway station, I think, going up.

Q. Now, there is a hydrant in that photograph to the left side, the side that has the houses portrayed on it. In reference to the hydrant and the pole near it, there is a telegraph pole, can you estimate or describe to us, approximately where your car was with Louis Capone in it? A. Somewhere around there, but I did not take notice of any pumps at that time.

Q. In relation to where your car with Capone was, where was the car with Farvel Cohen in it? A. Back of my car.

2238

Q. On the way over that trestle or railroad bridge which you have identified as People's Exhibit 16, and when you were coming down the stairway leading to that exhibit which you have in your hand, People's Exhibit 17, did Weiss say anything to you? A. Yes, sir, Mendy Weiss gave me his gun and told me to break it up and throw it away.

Q. Did you take possession of that gun? A. Yes, sir.

Q. When you saw the two cars, your car with Capone in it and the other car with Farvel

Cohen in, what did Strauss, Weiss, and Ferraco do? A. Louis Capone told me to take Jimmy Ferraco and drop him off. Then Louis Capone, Mendy Weiss, Harry Strauss, and Jimmy Ferraco went away in Farvel's car.

Q. When you got down there, what did Capone say you should do? A. He told me to take Jimmy Ferraco.

Mr. Talley: I object to that as repetition. We all heard it. The jury heard it. It is simply endeavoring to have it repeated, what he has already testified to.

2240

The Court: There is an apparent mix-up. Objection overruled.

Mr. Talley: I take exception. There is no mix-up in the question at all.

The Court: I thought there was.

Mr. Talley: No, not in the slightest. It is simply repeating the answer he gave before.

The Court: I thought he had Ferraco in both cars.

2241

Mr. Turkus: He did, that is why I am going over it, to clear it up.

The Court: Clear it up.

By Mr. Turkus:

Q. As to what happened, just before the objection was made you said Capone, in substance, said: "Take Ferraco with you"? A. Yes, sir.

Q. At that time you told us Capone had possession of your car. A. Yes, sir.

Q. Did he then release the car to you? A. Yes, sir.

2242

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Q. Did you get in your car? A. I did not get in yet, but I seen Mendy Weiss, Farvel Cohen, Louis Capone, and Harry Strauss go into Farvel's car, and Jimmy Ferraco went with my car.

Q. Where did the men who went with Farvel Cohen drive off, in which direction? A. They went up straight with Junius Street.

2243

Q. At that time did Weiss and Ferraco have their respective guns, do you know? A. Mendy Weiss gave me his gun, and Jimmy Ferraco had his gun.

Q. Did Strauss have his own gun? A. I don't know about that.

Q. At the time you got in your car did you have Weiss's gun then in your possession? A. Yes, sir.

Q. You say you and Ferraco drove off in your car? A. Yes, sir.

2244

Q. Where did you drive with Ferraco? A. I rode to first the Kenwood Garage, on Portland Street and East New York Avenue, and dropped off the gun that Mendy Weiss gave me.

Q. On the route to the Kenwood Garage did you do anything with the ignition key? A. I threw the key away while riding.

Q. I am referring to the ignition key of the hot car,—is that correct? A. Yes, sir.

Mr. Turkus: I ask that this photograph be marked for identification.

(Received and marked People's Exhibit X for identification.)

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2245

Q. When you got to the Kenwood Garage in your car, was Ferraco still with you? A. Yes, sir.

Q. When you got to this Kenwood Garage what did you do? A. I took the gun and put it in the cellar. I hid it.

Q. Where is the Kenwood Garage located? A. Portland Street and East New York Avenue.

Q. You say you hid the gun in the cellar of the garage? A. Yes, sir.

Q. I show you People's Exhibit X for identification and ask you if you can identify that exhibit? A. Yes, sir.

2246

Q. What is it? A. That is the garage where I hid the gun in the cellar.

Q. In the cellar door leading to the cellar? A. Yes, sir.

Mr. Turkus: I offer this photograph in evidence.

(Received without objection and marked People's Exhibit 32 in evidence.)

2247

Mr. Turkus: May People's Exhibit 32, the garage photograph, be exhibited to the jury?

The Court: Yes.

Q. Now, is that garage on People's Exhibit 32 a garage that you had been familiar with? A. Yes, sir; I kept my car there all the time.

Q. Do the cellar doors on the right-hand side of the photograph, leading into the garage, indicate the place where you walked into the cellar? A. Yes, sir.

2248

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Q. When you got into the cellar what did you do with the gun that Weiss had given you for destruction? A. I hid the gun.

Q. At that time where was Ferraco? A. In my car.

Q. After you hid the gun, Bernstein, what did you do? A. I went into my car to drop off Jimmy Ferraco.

2249

Q. Where did you drop Ferraco off? A. I think it was on Franklin Avenue station and the Eastern Parkway, I am not sure.

Q. After you let Ferraco out of your car, as you say, what did you do then? A. I went to the Baths.

Q. What baths? A. Shumer's Baths, on East New York Avenue and Douglass Street.

Q. How long did you stay at Shumer's Baths? A. A couple of hours.

Q. When you left the Baths, what did you do? A. I went to look for Mugsy Cohen.

Q. Where did you look for Mugsy Cohen? A. Somewhere in the Brownsville section.

2250

Q. Is that the same Mugsy Cohen who helped you steal the car and who got possession of the radio? A. Yes, sir.

Q. Did you find Mugsy Cohen? A. Yes, sir.

Q. Did you have a talk with him—yes or no? A. Yes, sir.

Q. After you got through talking with Mugsy, did you get anything from him?

Mr. Talley: I object. This happening, if it ever occurred, has nothing to do with the apparent conspiracy the District Attorney, as I assume, is trying to present, and what he does or what Mugsy Cohen

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2251

or anybody else did' in the absence of these defendants has no bearing upon this indictment whatever. I object to it.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. You may answer. A. I asked him if he got the radio.

Mr. Talley: I object to it and move to strike it out.

Mr. Turkus: I consent it be stricken out.

2252

Q. After you talked with Mugsy, did you get something? A. I got the radio off him.

Q. What radio are you talking about? A. The one that was taken out of the stolen car.

Q. What did you do with the radio that you got back from Mugsy? A. I went to Canarsie and threw the radio into the Bay, broke it up.

Q. After you threw the radio into the Bay, in Canarsie, what did you do? A. I went back to the garage, in the Kenwood Garage, and broke up the gun.

2253

Q. Where did you break up the gun? A. In the cellar.

Q. What did you break it up with? A. A sledge hammer.

Q. What did you do with the pieces of the gun? A. Threw it in the sewers.

Q. Did you get any money from anybody for driving the car?

Mr. Rosenthal: That is objected to.

The Witness: I obey orders.

2254

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Mr. Rosenthal: I move to strike out the answer.

The Court: Strike it out.

Q. Answer the question yes or no.

Mr. Rosenthal: I object to the question.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

2255

Q. Did you get any money for driving the car?
A. No, sir.

Q. Did you get any money for stealing the car? A. No, sir.

Q. Did you get any money for stealing the plates? A. No, sir.

Q. Were you promised any money? A. No, sir.

Q. Did you know who was going to be killed?
A. No, sir.

2256

Mr. Rosenthal: Wait a minute. I object to the question.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. What was your answer? A. I knew somebody was going to be killed, but I did not know who.

Q. When for the first time did you learn the name of the victim of that killing?

Mr. Rosenthal: That is objected to.

A. When I picked up the paper, Sunday night.

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2257

Mr. Rosenthal: Just a moment; I objected.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. What was your answer? A. When I picked up the paper Sunday night I seen on the front page a picture of the Rosen killing.

Q. Did you ever know that man, Joseph Rosen? A. No, sir.

Q. Now, after the killing of Rosen, did you continue to stay in Brooklyn for some time? A. Yes, sir.

2258

Q. Did you continue operating as a loan shark? A. Gambler and bookmaker, yes, sir.

Q. In what section? A. The Brownsville section.

Q. Where did you continue to operate from? A. Amboy and Sutter.

Q. How long did you operate there? A. Until I got arrested—until I gave myself up.

Q. Let me direct your attention to January 1, 1940. Did a new District Attorney come into office then, to your knowledge? A. Yes, sir.

2259

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception. I move to strike out the answer.

The Court: Motion denied.

Mr. Talley: I take exception.

Will your Honor admonish the witness when an objection is made not to too quickly give his answer before your Honor rules on it?

2260

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Mr. Turkus: I object to the inaplication contained in that statement.

The Court: (addressing witness) You just be on the alert—

Mr. Turkus: I object to the sardonic look on Judge Talley's face.

Mr. Talley: Go ahead with your case.

Mr. Rosenthal: You and your associates have been looking toward the jury all the time.

2261

The Court: Now that the interruption of the Court is over, will the stenographer repeat what the Court started to say before?

(The reporter read as directed.)

The Court: (addressing witness) You just be on the alert. When you see counsel arise, you will know he intends making an objection. Do not give your answer until the Court has ruled on that objection.

The Witness: It will not happen again, your Honor.

2262

By Mr. Turkus:

Q. In or about February of 1940 was there activity by the law enforcement agent, in the Brownsville district which you knew about?

Mr. Talley: I object to that.

The Court: Objection sustained.

Q. What happened in February, 1940, in the Brownsville district?

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2263

Mr. Rosenthal: I object.

The Court: Objection sustained, too indefinite. The other ruling was because it was too leading.

Q. Answer this question yes or no: In February of 1940 did you see certain things happen in Brownsville?

Mr. Cuff: I object to anything this man saw or did or said in January, 1940, or thereafter.

2264

Mr. Turkus: This is preliminary, your Honor.

The Court: It is indefinite. The answer would, if given, involve guesswork by the jury, because, being as he says, a gambler and bookmaker in Brownsville, he would constantly see things happen in Brownsville that have no relation to this case. I don't think you need that.

Mr. Turkus: I withdraw the question in that form.

2265

Q. In or about February of 1940, after there was a new District Attorney, what did you do?

Mr. Cuff: I object to that on the ground it is incompetent, immaterial, and irrelevant what he did.

The Court: Objection overruled.

Mr. Cuff: Exception.

Mr. Rosenthal: I object to the form of the question.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

2266

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The Witness: When District Attorney O'Dwyer declared war on the mob, I ran to Florida.

Mr. Rosenthal: I ask the answer to be stricken out.

The Court: Strike out the first part. Leave stand, "I ran to Florida."

Q. How long did you reside in Florida? A. A couple of weeks.

2267

Q. Where did you stay in Florida? A. The Commodore Hotel.

Q. What city? A. In Miami Beach.

Q. After you were there for a period of time, in Miami, Florida, where did you go? A. I went to Brooklyn.

* Mr. Talley: I object. This has no bearing on anything. We are not concerned with what he did in 1940.

The Court: Objection overruled.

Mr. Talley: Exception.

2268

Q. Have you followed the question? A. Before, I seen somebody; that is the reason I went to Brooklyn.

Mr. Rosenthal: I object to his volunteering an answer without a question.

The Court: It is unresponsive; strike it out.

Q. Down in Florida did you see somebody?
A. Yes, sir.

Mr. Rosenthal: I object to that as in no wise binding these defendants.

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2269

The Court: Objection overruled.

Mr. Rosenthal: Exception.

Q. Who did you see in Florida?

Mr. Rosenthal: The same objection.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I saw a lot of people there.

Q. Did you see any detectives you knew?

2270

Mr. Rosenthal: Objected to as leading and suggestive.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. Yes, sir.

Q. How long did you stay in Brooklyn after you came back from Florida? A. I left right away for California, Los Angeles.

Q. When you went to Los Angeles, California, where did you stop? A. I stopped in the Hotel Olympic, a hotel on Olympic Avenue between 7th and 8th, in Los Angeles.

2271

Q. How many days did you stay in Los Angeles? A. A few days.

Q. Where did you go after you left Los Angeles? A. I went to San Francisco.

Q. How long did you stay in San Francisco? A. I stood a few days.

Q. Where did you stop in San Francisco? A. In The President Hotel; then I sold my car for \$550.

Q. After you sold your car for \$550, where did you go from San Francisco? A. I took a

2272

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bus and I went to Dallas, Texas, around Commerce Street.

Q. Where did you stop in Dallas, Texas? A. I stopped there about eight or nine hours.

Q. Where did you go from Dallas, Texas? A. I then took a bus and I went to St. Louis.

Q. Where did you stop in St. Louis? A. Some cheap hotel, not far from the Greyhound Bus station.

2273

Q. How long did you stay in St. Louis? A. About two days. _____

Q. Where did you go from St. Louis? A. To Chicago.

Q. Where did you stop in Chicago? A. The Paramount Hotel, Winthrop Avenue.

Q. How long did you stay there in Chicago? A. Two weeks—about two weeks.

Q. After you were in Chicago a couple of weeks where did you go? A. I came in to Brooklyn.

Q. When you came in to Brooklyn where did you go? A. I gave myself up to Detective John McDonough.

2274

Q. Where did Detective John McDonough take you? A. He brought me to District Attorney O'Dwyer and Captain Bals. There I became a rat and told everything.

Mr. Rosenthal: I move to strike out the latter part.

The Court: Strike out after "Captain Bals."

Q. We were to the point where Detective McDonough took you to see District Attorney

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2275

O'Dwyer and Captain Bals; is that correct? A. Yes, sir.

Q. Do you remember the day you were brought in or that you gave yourself up as you have indicated to the jury? A. I think it was some-time in April; I don't remember no dates.

The Court: What year?

The Witness: 1940.

Q. When you were running from city to city as you told the jury, were you what is known in your language as "hot?"

2276

Mr. Talley: I object.

The Court: Objection sustained.

Q. What were you running from?

Mr. Rosenthal: I object.

The Court: Objection overruled.

Mr. Rosenthal: Exception.

A. I knew the combination was looking for me.

2277

Mr. Rosenthal: I ask that that answer be stricken out.

The Court: Yes.

Mr. Rosenthal: I move for a mistrial and the withdrawal of a juror.

The Court: Motion denied.

Mr. Rosenthal: Exception.

I ask your Honor to admonish the jury to disregard it.

Mr. Cuff: I make the same motion on behalf of the defendant Weiss.

2278

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The Court: The Court has already given instructions during the whole trial on matters that are stricken out, and farther instructions are denied at this time.

Mr. Rosenthal: I take an exception.

Mr. Cuff: I make the same motion on behalf of the defendant Weiss.

The Court: I just ruled on both motions.

2279

Q. Do you remember the day you surrendered yourself to Detective McDonough and were brought to the District Attorney's office? A. I don't remember no dates.

Q. Was it sometime in April of 1940, can you remember that? A. Yes, sir, I know it was in April, 1940.

Q. Have you another name besides Sol? A. Yes, sir.

Q. What is it? A. Sholem.

Q. Is Sholem a Hebrew word? A. Yes, sir, a Jewish name.

2280

Q. Is that the name which you were given at the time of circumcision? A. Yes, sir.

Q. What is the English equivalent of Sholem? A. Peace.

Q. When you were brought in to see Judge O'Dwyer—just answer this yes or no—did Judge O'Dwyer talk to you? A. Yes, sir.

Mr. Cuff: Objected to as incompetent, immaterial and irrelevant.

The Court: Objection overruled.

Mr. Cuff: Exception.

Q. And did you talk with Judge O'Dwyer?
A. Yes, sir.

Mr. Talley: I made the same objection.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. After you talked to Judge O'Dwyer were you brought before the Grand Jury in Brooklyn sometime later? A. Yes, sir.

Q. Did you testify before a Grand Jury up in Sullivan County? A. Yes, sir.

Q. Did you testify in the court-room up in Sullivan County? A. Yes, sir.

Q. Were you cross-examined there by a lawyer? A. Yes, sir.

Q. Where are you looking? A. Looking at that lawyer (indicating).

Q. Who do you mean, Mr. Saul Price? A. Yes, sir.

Q. Was that in the Gangy Cohen case? A. Yes, sir.

Q. Were you taken to the State of California and there did you testify before a Grand Jury?
A. No, sir.

Mr. Cuff: I object to it.

The Court: What is your answer?

A. No, sir.

Q. Did you testify—yes or no—before the Brooklyn Grand Jury before you went up to Sullivan County? A. A long time before.

Q. Since the time of your surrender to Detective McDonough, under the circumstances you

2284

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have related to the jury, have you been kept confined in various hotels? A. Yes, sir.

Q. Have you been confined with others? A. Yes, sir.

Q. Who are the people you have been locked up with? A. Do you mean in the hotel?

Q. Yes. A. Abie Reles, Syckoff, and Al Panama.

Q. Are there police in the hotel? A. Yes, sir.

2285

Q. Is it a separate suite? A. What do you mean by a separate suite?

Q. Are there a separate series of rooms there, so you can gain access only through certain methods? A. Yes, sir.

Mr. Talley: I object.

The Court: Objection overruled.

Mr. Talley: Exception.

Q. Are the doors barricaded? A. Yes, sir.

Q. Are detectives there, heavily armed? A. Yes, sir, machine guns, shot guns, and what else they have.

2286

Mr. Cuff: I object to it.

The Court: Objection overruled.

Mr. Cuff: Exception.

I move on behalf of the defendant Weiss for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Cuff: Exception.

Q. Do you know of your own knowledge about an arrangement of mirrors which command a view of the corridor?

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2287

Mr. Cuff: Objected to.

The Court: Objection overruled.

Mr. Cuff: Exception.

Q. (continuing) —that the detectives have whereby they can see anybody coming up on that floor through the corridor? A. Yes, sir; there is a big mirror in the hallway right near the door.

Q. Is there a peep-hole in the door behind which you and these other men are kept?

2288

Mr. Cuff: I make the same objection.

The Court: Objection overruled.

Mr. Cuff: Exception.

A. Yes, sir.

Mr. Barshay: Before the examination, your Honor recalls that I had a general objection to this man's testimony with respect to our defendant, Buchalter, and with respect to the reception of any exhibits in evidence, as not binding upon Buchalter. I now renew my motion to strike out each and every piece of testimony and each and every exhibit on the grounds set forth when I originally made my motion.

2289

The Court: Motion denied.

Mr. Barshay: Exception.

The Court: If it is agreeable, I would rather take cross-examination in the order in which the names appear, so there will be no confusion. First, cross-examination by the defendant Buchalter.

What is the answer?

2290

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Mr. Barshay: I shall not cross-examine this witness at this time.

The Court: I do not understand the answer.

Mr. Barshay: The answer is that this man has in no wise connected the defendant Buchalter, and I have nothing to cross-examine him on.

The Court: I did not mean that. You say "at this time."

2291

Mr. Barshay: If anything develops later on in which my client may be connected, then I will have something to cross-examine about. I have nothing to cross-examine him about now.

The Court: The Court cannot accept a qualification.

Mr. Barshay: No cross-examination.

Cross-examination by Mr. Talley:

2292

Mr. Talley: Before I commence to examine this witness, I request your Honor to remove the court officer who stands within six inches behind the chair of the witness. I ask your Honor to remove from the sight of the jury the two detectives who escorted this witness to the witness chair. There is another officer standing, in uniform, immediately alongside of the witness chair. I have no objection to his standing in that general vicinity, but the other display I ask to be removed, as prejudicial to these defendants and interfering with proper cross-

examination and prejudicial to the defendants in this court-room. There are plenty of detectives in this court-room and there are other uniformed policemen who are kept outside of the court-room. These three defendants are brought in here, in sight of the jury, in chains, literally in chains. There are three or four officers sitting alongside of these defendants, and I object to this display as unnecessary, unprecedented, and here for no other reason than to prejudice the jury against these defendants. I ask that they be removed, and that we proceed in a legal, judicial manner in the conduct of this trial from now on, and that we take away this theatrical display.

2294

Mr. Rosenthal: I join in that motion.

The Court: Anything by the defendant Buchalter?

Mr. Barshay: We join in the motion.

The Court: All right, for the purpose of the record—the set-up is the usual one which is followed in this court in all cases so far as the Court can recall. When witnesses are brought in, in custody, detectives who are charged with the custody—that is, detectives or other officers or jailers who are charged with the custody, stand back in the corner, substantially out of sight of the jury, but close enough not to lose technical custody. Then the two attendants of this court stand, first the Judge's personal attendant, directly behind the prisoner witness, and next an-

2295

2296

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other one, in a position where he ²can guard the door, which is directly to the left of the witness stand and which opens into the Judge's chambers, and provides a means of escape. There is nothing unusual about this, so that is not considered seriously, and it is denied.

Did I understand you to say the defendants are brought in in chains?

Mr. Talley: Yes.

2297

The Court: You mean they are manacled?

Mr. Talley: Yes, sir, manacled with these officers who are with them.

The Court: At the present time?

Mr. Talley: No, the manacles are removed when they come in the court-room, but not before; when they are seated and not before; and your Honor requires the jury to be in their seats so they can see this spectacle of how these men are brought in.

2298

The Court: Do you impugn the Court's honor? The Court does not require the jury to be in their seats in order to see "the spectacle" because the Court is not aware of it; and the Court has not been aware of it until you just informed the Court to that effect. This compels, being before the jury, a ruling in the presence of the jury, and that is, so far as the custodianship is concerned, until the defendants enter the court-room and are seated it is not within the Court's jurisdiction, and is not under the Court's direc-

tion. That is a responsibility that is elsewhere charged. But at no time during the trial will the Court permit any defendant to sit here menaced, and, so far as the Court is informed by you, the defendants have not sat here manaced. That is overruled.

Mr. Talley: My objection is to their being brought into your court-room menaced, and as soon as they enter the court-room the manacle or manacles are kept on them until they are seated. Then they are removed. As soon as recess is declared the manacles are then put on and they are taken out, not merely with these three detectives who are sitting alongside of them now, but also preceded and followed by uniformed court attendants. Your Honor has direction of what happens in this court-room, and it is what happens here that I object to, not what they do outside the court-room and not in the presence of the jury.

2300

2301

The Court: These defendants have been brought into this court-room for trial in a court which is not adapted to the trial of criminal cases. They have to be brought through the public corridor, down a public staircase, and through a door which leads into the Judge's chambers, shocking as this may seem, in order to come into this room. The Court has ruled on this and has said all it is going to say. Denied.

Mr. Talley: Exception. I take an ex-

2302

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ception to your ruling and also to your comment, as being prejudicial to these defendants.

I am now asking for my own information and not for any other reason, I beg to assure the Court: Are you going to continue to permit these defendants to be brought into this court-room manacled, the manacles being kept on them until they are seated in their chairs?

2303

The Court: The Court is not under examination as a witness and declines to answer the question. Please proceed with your examination.

Mr. Talley: Exception.

By Mr. Talley:

Q. Bernstein, you referred to Mugsy in your testimony as being an automobile thief and a radio crook; do you remember that? A. Yes, sir.

2304

Q. That is Mugsy Cohen is his name? A. Yes, sir.

Q. An automobile thief and a radio crook, that is how you designated him? A. Yes, sir.

Mr. Turkus: Objected to as already answered.

Q. What kind of a thief are you? A. Whenever I get orders from the mob.

Q. That is, you do any kind of a theft or any kind of criminal work so long as you are told to do so? A. Never, unless I get orders from the mob.

Mr. Talley: I move to strike it out.

The Court: Motion granted. Answer the question yes or no.

A. Yes, sir.

Q. You had considerable experience as an automobile thief before August of 1936, or the time you have testified about?

Mr. Turkus: I object. He testified to no such crime; it was September.

Q. September, 1936, or the time you referred to—you had stolen automobiles before that? A. Not to steal, with a hot box.

Mr. Talley: I move to strike it out as not responsive.

The Court: Strike it out; just say yes or no.

The Witness: Yes, sir.

Q. How many automobiles had you stolen before September, 1936? A. Whenever I got orders.

Mr. Rosenthal: I ask that the answer be stricken out as not responsive.

Mr. Turkus: I say it is responsive.

The Court: Strike it out.

Q. My question was, how many? A. Before 1936?

Q. Yes. A. About four or five.

Q. Where were they stolen, in Brooklyn? A. Yes, sir.

2308

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Q. Were they stolen in Brownsville? A. Yes, sir.

Q. You always stole them when you got orders, as you say, from somebody, is that right?

Mr. Barshay: I object to the question.

The Court: Objection overruled.

Mr. Barshay: Exception.

A. From the mob.

2309

Q. When you stole cars, you would get orders to steal them? A. Until I got arrested; I stopped stealing them.—Whenever I got orders from the mob I stole them.

Mr. Barshay: I don't want to interrupt, but may I have, on behalf of the defendant Buchalter, a general objection?

Mr. Talley: I move to strike out the answer.

2310

The Court: The answer is partly responsive, but obviously objectionable and stricken out. The question may be repeated and the witness try to answer it more clearly.

The Witness: I stopped stealing when I was arrested.

Q. What? A. I stopped stealing when I was arrested.

Q. When you were arrested when? A. For the car I stole—the plea I took to.

Q. You stopped stealing after you were arrested? A. Yes, sir.

Q. And you were arrested seven or eight

times, weren't you? A. What do you mean, I was arrested seven or eight times?

Q. Just listen to what I say. A. I was picked up a lot of times.

Q. You were arrested? A. Yes, sir, I was arrested.

Q. Was each of these arrests for stealing an automobile? A. No, sir.

Q. You said you were thirty years old now? A. Yes, sir.

Q. You were arrested and indicted for the crime of burglary in 1933? A. In 1930?

2312

Q. Weren't you? A. I don't remember no years.

Q. You don't remember the years? A. I don't remember, that was a long time ago.

Q. It would be eleven years ago, February 13, 1930, you were arrested and charged and indicted for burglary, weren't you?

Mr. Turkus: I object to the form of the question. As a former Judge of the Court of General Sessions he should know that arrests are not the subject-matter of cross-examination.

2313

Mr. Talley: He was indicted and pleaded guilty to the charge I am speaking of.

Mr. Turkus: Well, say so.

Mr. Talley: Don't you give me any instructions.

Mr. Turkus: It might do you some good.

Mr. Talley: You have a long way to go for that.

2314

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Q. May I have an answer to my question? A. What is that?

Q. (The Court:) Were you convicted in General Sessions? A. No, sir.

The Court: Then the objection is sustained.

By Mr. Talley:

2315

Q. In 1930 did you plead guilty to the charge of unlawful entry? A. Yes, sir.

Q. Were you guilty of the crime to which you pleaded guilty? A. Yes, sir.

Q. That was a burglary, wasn't it?

Mr. Turkus: I object. He just said it was unlawful entry.

The Court: Objection overruled.

A. Yes, sir.

Q. You were indicted for burglary? A. Yes, sir.

2316

Q. You took a plea to a lesser crime than burglary, which was unlawful entry? A. Yes, sir.

Q. Were you acting under orders from anybody when you committed that crime? A. No, sir.

Q. Now, in 1933, you again committed a burglary for which you were arrested, didn't you? A. Yes, sir. I don't know what year it is; I cannot tell you that. I know I was convicted of stealing a car.

Q. I am speaking of your arrest on March 2,

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2317

1933, that was for burglary, wasn't it? A. I don't remember that, sir.

Mr. Turkus: I object.

The Court: Objection sustained, unless there was a conviction.

Q. You were arrested again in 1933 and charged with petit larceny?

Mr. Turkus: Objected to.

The Court: Objection sustained.

2318

Mr. Talley: Exception.

Mr. Turkus: Just a minute. May Judge Talley be admonished that he is not to discuss arrests?

The Court: The attitude of the Court is not to admonish counsel on either side. Neither side can be admonished, because the law is elementary. The witness may not be cross-examined or examined as to arrests unless there was a conviction.

Q. You pleaded guilty in 1933 to the crime of stealing an automobile, didn't you? A. I don't remember what year it was, but I took a plea, yes, sir.

2319

Q. Was it 1940? A. Not near that time.

Q. Was it 1938? A. No, sir, not that time.

Q. Was it 1935? A. No, sir.

Q. Before? A. I don't think—I don't remember that.

Q. You don't remember being charged with stealing an automobile? A. Yes, sir, I do remember.

Q. You don't remember the circumstances of

2320

Sol Bernstein—For People—Cross

your having plead guilty to that crime? A. Yes, sir, I do remember.

Q. Wasn't that in 1933? A. I don't remember that date.

Q. December 19, 1933, to be correct. A. I don't remember the year.

Q. You mean you do not remember the date, but you do remember the charge and the arrest and your plea? A. Yes, sir.

2321

Q. You were put on probation for three years, weren't you, by a judge in this court, Judge Martin? A. I don't remember; I know I was in front of Judge Martin and Vause on those two cases; that is all I can remember.

Q. Weren't you sentenced to three years in the penitentiary, and the sentence suspended while you were on probation? A. Yes, sir.

Q. Your probation, then, was for three years, wasn't it? A. I don't know how long it was.

Q. Do you remember being on probation at all? A. Yes, sir.

2322

Q. Do you remember the time for which you were on probation? A. What do you mean, the time?

Q. You know what I mean. A. I don't know what you mean.

Q. Were you put on probation for six months or for a year? A. For the whole term, whenever I might have probation.

Q. Wasn't it three years? A. I don't recall it, sir.

Q. You had to report to a parole officer, didn't you, while you were on probation? A. Yes, sir.

Q. What was his name? A. I only believe it was Higgins, I am not sure.

Q. How many times did you report to him?

A. Every time I was to make a report, I reported.

Q. How many times? A. Whenever I was to make a report.

Q. How often did you have to make a report?

A. I think once a month, I think, I am not sure.

Q. How many months did you report to him?

A. Whenever I had to.

Mr. Talley: I move to strike out the answer as unresponsive. I now ask the Court to direct the witness to answer these questions.

2324

The Witness: Whatever my probation was.

Q. (The Court) Was it about once a month for the entire period of your probation? A. Oh, no, every time I had to report was once a month or once in two weeks.

Q. (The Court) It varied? A. Yes, sir, continuously.

Q. For how long a time were you required to report once a month or once every two weeks, how often did you have to report? A. I don't understand.

2325

Q. Was it for a year, two years, or three years? A. It might have been.

Q. Might have been what? A. Might have been one year, might have been two years, might have been three years.

Q. I am asking you how long it was. A. I don't recall it.

Q. Did you steal the car that was the subject

2326

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of that charge against you? Did you steal that because somebody ordered you to? A. No, sir.

Q. So that the two times when you pleaded guilty to crimes they were crimes which were committed by you yourself and not under orders? A. Excuse me, let me get this right; let me get this right, I didn't hear you.

Q. It is perfectly plain. A. No, sir, that car was stolen under orders.

2327

Q. Didn't you just, two minutes ago, tell me it was not under orders? A. I refreshed my memory.

Q. You've refreshed your memory lately on a lot of things, haven't you? A. What do you mean by a lot of things?

Q. Don't you understand English? A. No, sir, I don't understand what you are saying about it.

2328

Mr. Turkus: I ask that the sarcastic observation, "You have had your memory refreshed on a lot of things," be stricken out and the jury told to disregard it.

The Court: The objection is untimely. He has answered. An objection of that kind should be made promptly.

Q. In addition to being a burglar and an automobile thief, what other crimes have you committed?

Mr. Turkus: I object to the preamble.

Mr. Talley: He has stated he was a burglar and he pleaded guilty to it, and

he stated he was an automobile thief and pleaded guilty to that.

The Court: Objection overruled.

(At the request of Mr. Talley, the reporter reads the question.)

The Witness: Whenever I got orders from the mob.

Mr. Rosenthal: I object and move that be stricken out.

The Court: The question is what other other kinds of crimes.

2330

Mr. Rosenthal: I ask your Honor to admonish the witness to answer the question if it is physically possible, and not to volunteer the same answer each time he is asked a question.

The Court: That is not necessary.

Mr. Rosenthal: Exception to your Honor's refusal.

The Witness: Murders, schlammin jobs, and whenever the mob needed tires for their cars.

Mr. Rosenthal: I move to strike it out as not responsive. The latter part is not responsive.

2331

The Court: Strike it out.

By Mr. Talley:

Q. Are you finished? A. Yes, sir.

Q. How many murders did you commit or take part in? A. This is the only one. I took part in one in the mountains. I don't know what you mean by "part."

Q. You don't know the expression "take part

2332

Sol Bernstein—For People—Cross

in"? A. I know they brought a dead man there; that is all I can tell you.

Q. So you say you took part, participated in, and had something to do with two murders; is that right?

Mr. Turkus: I object. That is not the testimony.

The Court: Objection sustained.

Mr. Talley: Exception.

2333

Q. What did you say about two murders? A. What do you mean, what I said?

Q. Just repeat to me what you said.

Mr. Turkus: Objected to as repetitious.

Mr. Talley: I have a right, on cross-examination, to have any such repetition—that is one of the purposes of cross-examination.

The Court: Objection sustained.

Mr. Talley: Exception.

2334

Q. Do you say you took part in or committed one murder other than this one; is that what you said?

Mr. Turkus: Objected to.

The Court: Objection overruled.

A. What do you mean? I don't understand you.

Q. That murder in the mountains, did you take part in the murder itself? A. I know they brought a dead body there; I was not there when it was killed.

Q. What did you do? A. I helped them bury the body.

By the Court:

Q. You helped dispose of it after death, that would be the most you recall? A. Yes, sir.

By Mr. Talley:

Q. You know that was a man who was murdered in Sullivan County? A. When they brought the man over I didn't know anything about it.

2336

Q. You knew a man named Yuran had been murdered? A. I never knew his name until I read the papers, when I gave myself up.

Q. You say you did not know his name? I am asking you, didn't you know the man in Sullivan County, in the murder you referred to, that his name was Yuran? A. I didn't know his name at that time.

Q. Do you know it now? A. Now I do, yes, sir.

2337

Q. You were one who took the police in Sullivan County, whether they came from New York or belonged up there, to the place where the body of this man Yuran, who had been murdered, was buried? A. Yes, sir, that is right.

Q. What else did you show them? A. What do you mean, what else? You will have to explain better.

Q. You don't understand English at all? A. I understand English, but you have to explain.

Q. You did not have a bit of trouble answering the District Attorney's questions? A. That

2338

Sol Bernstein—For People—Cross

was the first murder I ever was on; I cannot forget that.

Q. That was the first murder you ever were on? A. Yes, sir.

Q. That is the Yuran murder? A. I just said the Rosen murder.

Q. Was the Yuran murder after the Rosen murder? A. Yes, sir.

Q. Well, then you don't deny taking part in the Rosen murder, do you? A. No, sir.

2339

Q. You have not been indicted for your part in the Rosen murder, have you? A. No, sir.

Q. You were not indicted for anything you had to do with the Yuran murder in Sullivan County? A. No, sir.

Q. You have never served time for any of your crimes, have you? A. No, sir.

Q. And you are taking good care now not to serve any time for this Rosen murder if you can help it? A. What do you mean? I don't understand you.

Q. You went to public school in Brooklyn? A. Yes, sir.

2340

Q. Were you born here? A. In Brownsville, yes, sir.

Q. I think you said you went to junior high school. A. Yes, sir.

Q. And you still say you don't understand my language? A. I did not finish public school; I went to S.A. I understand, too.

Q. Didn't you tell us you went to junior high school? A. Well, it was junior high school, the 9.B.

Q. You went to a junior high school? A. Yes, sir, that is what they called the school.

Q. You don't speak any language other than

the English language? A. I can speak Jewish very good.

Q. Now, you tell us that you worked, when you left school, one month as a messenger boy?

A. Yes, sir.

Q. Did you lose your job in the messenger company at the end of the month? A. I quit.

Q. Did you go right to work then? A. Later, a little later on.

Q. How much? A. About a month or so later.

Q. Then you went to work for another concern, didn't you? A. A hat factory.

2342

Q. You told us you worked three months there. A. A couple of months.

Q. You told us on Friday three months, do you remember? A. It could be three months.

Q. Or it could be two months? A. It could be two months.

Q. Then you told us you got a job as a cutter in leather goods? A. Yes, sir, Majestic Brief Case Company on Spring Street and Broadway.

Q. Are they still in business, do you know? A. I don't know, sir.

Q. You told us you worked in that place for three years. A. Yes, sir, about three years.

2343

Q. You said three years. Do you mean to change it? A. About three years.

Mr. Turkus: I object.

The Witness: I am not accurate at years.

Mr. Turkus: I am trying to make a formal objection, but these are all rapid-fire questions and answers.

The Court: What is your objection?

Mr. Turkus: My objection was as to

2344

Sol Bernstein—For People—Cross

the form of the question, but it has been answered; an objection is worthless, so I withdraw it.

Q. As a matter of fact, you only worked two years for the leather factory, didn't you? A. I worked about three years.

Q. Didn't you testify under oath in another case you worked there for two years? A. Maybe I did, sir.

2345

Q. You testified here that you worked there three years. A. I am not accurate at years; I know the facts; just ask me the facts, and I will tell you.

Q. Which was right, two years or three years? A. Listen, sir, I am not accurate at years.

Q. You don't know a year contains twelve months? A. I know that.

2346

Q. I am asking you now which was the correct testimony you gave, that you worked for this leather place two years or that which you gave on a previous occasion, under oath, or the testimony that you gave here Friday, that you worked for three years?

Mr. Turkus: Objected to as argumentative and repetitious; already fully answered.

The Court: It is immaterial, too, because it applies to when he was a messenger boy. Objection sustained.

Mr. Talley: I take an exception. I want to correct your Honor's impression that this has to do with his service as a messenger boy. He said he worked in a leather factory. One was for a month

and the other was three months, then he said he worked three years subsequent to being a messenger boy. He testified on another occasion that he only worked there two years.

The Court: I recall the witness used the word "about." Objection sustained. This is all a matter of background and has no direct or indirect relation to the alleged crime.

Mr. Talley: Expection.

2348

It has very much more relation to the alleged crime than has the larger part of the testimony he gave.

Mr. Turkus: I object to his going over every period of this witness's life without restriction.

The Court: The Court is most liberal.

Mr. Rosenthal: I object to that remark. These are all matters that have been brought out on direct examination by the District Attorney, and defense counsel certainly has a right to prove and cross-examine on matters which the District Attorney brought out to this jury on direct examination in this case.

2349

The Court: Is that a speech or an objection?

Mr. Rosenthal: I am making an objection.

The Court: The Court strikes it out because it constitutes a speech and is not for the edification of the Court but the edification of the gallery. Now proceed.

Mr. Rosenthal: I except.

2350

Sol Bernstein—For People—Cross

By Mr. Talley:

Q. In the trial in which you testified in Monticello, Sullivan County, in the month of June, 1940, were you asked these questions and did you make these answers:

"Q. Where did you work? A. I worked for a leather company's place.

"Q. Right after you left public school? A. The Majestic Leather Company.

2351

"Q. What is their address? A. I don't remember.

"Q. Are they in business now? A. I don't know.

"Q. How long did you work for them? A. Two years." Were you asked those questions and did you make those answers that I have just read? A. If it is in the book I said it.

Mr. Talley: I move to strike out the answer and ask for a responsive answer to my question.

The Court: Motion denied.

2352

Mr. Talley: Exception.

Q. How old were you when you went to work for the Majestic Leather Company? A. How old I was?

Q. Yes. A. About sixteen, close to sixteen.

Q. Sixteen? A. I think so; I am not sure.

Q. Would you be eighteen when you left their employ? A. I might have been eighteen or nineteen, sir.

Q. Whether it was eighteen or nineteen, were you then heavily in debt? A. When I worked in the leather company I started getting in debt.

Q. When you went to the leather goods company? A. Yes, sir.

Q. Which you say was when you were about sixteen? A. Now wait a minute—eighteen or nineteen—something like that.

Q. You were eighteen or nineteen when you left? A. Yes, sir. Not when I was sixteen. I did not graduate until then.

Q. If you were sixteen when you left there—
A. I don't remember saying it is—I will let you know.

2354

Q. I am trying my best to give you an opportunity to let me know. A. I will let you know. When I graduated—

Q. Answer my question. A. What is it?

Q. Did you say you went to work for the leather goods concern when you were about sixteen? A. Yes, sir.

Q. Did you say that when you went to work for the leather goods people you began to get into debt? A. Yes, sir.

Q. Then by the time you left there, whether it was two or three years,—you would be eighteen or nineteen,—you were very heavily in debt, weren't you? A. Yes, sir.

2355

Q. And who did you owe money to, shylocks in Brownsville? A. Yes, sir, the mob on Sackman and Livonia Avenue, and if you want me to tell you, I will tell you.

Q. I will give you a chance to tell everything you want to tell before I get through with you, don't worry about telling me.

Mr. Turkus: I object to the criticism of the offer in his answer.

Mr. Talley: Will you kindly take your seat?

2356

Sol Bernstein—For People—Cross

Mr. Turkus: Will you kindly take yours? As a former judge, you should know how to conduct yourself.

Mr. Talley: Sit down.

Mr. Turkus: No matter whom you represent—

Mr. Talley: I told you before I did not need any admonition from you, and don't make it necessary for me to say it again.

2357

The Court: The Court's gavel is in chambers, locked up in the desk. I did not anticipate having use for it in this trial. I have not, so far. Now, let us try to get along nicely. We all know how to try a case.

Q. So that after you left the leather goods place you became a shylock on your own account? A. Yes, sir.

Q. And a gambler? A. On my own account, yes, sir.

Q. And a bookmaker? A. On my own account.

2358

Q. And a thief? A. Whenever I got orders from the mob.

Mr. Rosenthal: I move that be stricken out.

The Court: Strike it out.

The Witness: Now wait a minute, sir—not at that time; until I got the arrest, then I started; but I don't know. When they told me to steal that car, I was working for that mob then.

Mr. Rosenthal: I move to strike out

the answer as not responsive to any question.

The Court: Strike it out.

Q. After you left the leather goods place you did not do any honest work, did you? A. Shylocks—how can I do any honest work.

Q. Is your answer no? A. What do you mean, "No"? I just answered you.

Q. Do you know what "No" means in the English language? A. Yes, sir. I was shylocking, I just answered you.

2360

Q. And also a thief? A. Yes, sir, for the mob.

Mr. Rosenthal: I object and ask the latter part be stricken out.

The Witness: Listen, Counsellor—

Mr. Rosenthal: Just a minute, Mr. Witness; I am addressing the Court. I move the latter part of the answer be stricken out.

The Court: Strike it out.

Mr. Rosenthal: I ask your Honor to admonish this witness,—he has been admonished by your Honor twice,—to answer questions and not volunteer.

2361

The Court: (addressing witness) Stop saying "for the mob."

The Witness: I was not an angel. Does that satisfy you?

The Court: Do not quarrel. Just keep your head and answer questions.

Q. Instead of being an angel, you were a safe burglar, weren't you? A. No, sir.

Q. You have broken open many safes right

2362

Sol Bernstein—For People—Cross

here in this Borough of Brooklyn, haven't you?
A. No, sir.

Q. Do you mean to say you never opened or cracked a safe? A. No, sir.

Q. That is what you mean to say? A. Yes, sir.

Q. Weren't you known throughout Brooklyn amongst your crowd, as a safe burglar? A. You are telling me something new.

Q. Weren't you? A. I don't know, sir.

2363

Q. You told us all the jobs you had before you became a criminal. Do you know what— A. What do you mean, before I became a murderer? I don't get you.

Q. Well, did you become a shylock? A. When I started being a shylock, then I didn't become an angel. I was not a good citizen, if that is more clear.

Q. I don't understand that language at all. A. Well, I don't know.

Q. You say when you started to become a shylock you became an angel?


2364

Mr. Turkus: He said he did not become an angel.

Q. Now my question is, and I will repeat it—you listen to it: After you left the leather goods concern you went into the shylock business; is that right? A. Yes, sir.

Q. And you told us the only job you had since you were a school boy was a messenger boy, the other job which you worked three months at, and the leather goods concern. That is all the legitimate business experience you had, wasn't it? A. Legitimate?

Q. Yes. A. Yes, sir.

Q. Now, you are not confused about that, are you? A. What do you mean, I am not confused? 

Q. You understand what I am saying to you, don't you? A. When I worked it was a legitimate matter. I did steal. I got arrested,—I think so, I am not sure,—for trying to break into a store. I am not sure I was working at that time.

Q. You told us three place where you worked. A. I am not sure; if I am not positively sure I will tell you.

2366

By the Court:

Q. In the burglary, in 1930, were you working then? A. I know when I was working—I think I got arrested for trying to break into a store, but I cannot remember just when,—I think so; I am not sure.

By Mr. Talley:

Q. Now, you are not sure whether, when you broke into the store in 1930, you were working for the leather goods company? A. Yes, sir.

2367

Q. You are not sure about it? A. No, sir.

Q. You are sure you worked for a messenger company? A. What did you say? I worked as a messenger boy, yes.

Q. You did hear me? A. I worked in a radiogram, too, on Wall Street.

Q. Radiograms? A. Radiograms, not Western Union or not Postal Telegraph.

Q. As a messenger boy? A. Yes, sir.

Q. Then you worked where? A. On Wall Street.

2368

Sol Bernstein—For People—Cross

Q. Then you worked in a hat factory? A. Then a brief case place.

Q. Then after that where did you work? A. After the brief case place I began as a shylock.

Q. You did not go in any other business than that of crime? A. As a bookmaker and a gambler. Whenever I was told to do something—if you want me to tell you who, I will tell you who.

2369

Q. You are not basting to tell a whole lot, Bernstein—you certainly are anxious.

Mr. Turkus: I object to that. If you want to take up his invitation, accept it. If you don't, I object to the comment.

Mr. Talley: We are not taking any invitation from this witness, I will tell you that.

The Court: That does not require any ruling, the comments.

2370

Q. Have you told us all the businesses you were engaged in from the time you left high school? A. I was not so smart, I did not go to high school.

Q. You said you went to junior high school. I will change it.

Mr. Turkus: I object. He has answered.

The Witness: A junior high school is not a high school by me; it is a junior high school.

Mr. Talley: At page 481 of his testimony—and I am addressing the Court—this witness said, "I went to Junior High

School 178, Dean and Saratoga Avenue, Brooklyn."

Q. My question is: Were you in any other business besides the three you have told us about? A. Three what?

Q. Three places of employment which you had. A. I told you what I was: shylock, a book-maker, and a gambler, and what else I told you before. If you want me to tell you it, I will tell you it.

2372

Q. That is what you call yourself? A. What do you mean? Yes, when I was shylocking, a bookmaker, and a gambler, that was my business.

Q. Why didn't you tell us about operating a candy store here in Brooklyn when you were being asked what business you were engaged in? A. I forgot to tell you.

Q. Ah—you forget that? A. Yes, sir. You asked me, and I am telling you.

Q. Now, have you forgotten any other line of business you were in besides operating a candy store? A. Maybe you can tell me, I don't know.

2373

Q. I am asking you. A. I don't know.

Q. How tall are you? A. 5 foot 8, I think, or 8½.

Q. How much do you weigh? A. 165 pounds when I was on the outside. I don't know now because I have not got a scale to weigh myself.

Q. We will have to get you one and make you comfortable. You are living in the Half Moon Hotel, aren't you?

Mr. Turkus: Just a minute. May we have some dignity in the conduct of this case?

2374

Sol Bernstein--For People--Cross

The Witness: Do you want me to answer that question?

Q. You are living at the Half Moon Hotel, aren't you? A. Yes, sir, heavily guarded, with plenty of machine guns and shot guns.

Q. Is that at your request you are heavily guarded? A. I thought you meant that.

2375

Q. Is it at your request you are heavily guarded? A. What do you mean, at my request?

By the Court:

Q. Did you ask for it? A. (no answer.)

By Mr. Talley:

Q. Do you speak Yiddish better than you do English? A. To say what?

Q. You heard what I said. A. English I talk better.

2376

Q. You don't need an interpreter, do you?

Mr. Turkus: I object. This is sarcastic.

The Court: Objection sustained.

Q. You told the District Attorney many times about your being in what you said was "My automobile." Do you remember using that expression? A. Yes, sir.

Q. What kind of an automobile was that? A. A Buick.

Q. What kind of a Buick? A. A '36--a '35, four-door sedan.

Q. Was it your automobile? A. Yes, sir.

Q. Who did you buy it from? A. Who did I buy it from? I think Litvin got that for me, East New York Avenue.

Q. Who is he? A. A dealer who sells cars, on East New York Avenue.

Q. Was it a new car or a second-hand? A. A new car.

Q. A new Buick car? A. Yes, sir.

Q. Was it registered in your name? A. No, sir.

Q. How long did you have it before this time in September, 1936, we have been talking about?

A. I owed money to shylocks and I had to sell it.

Q. How long did you have it? A. I am telling you when, when I had to pay money to shylocks I sold it.

Q. How many weeks, days, or months? A. I am telling you when.

Q. Did you have this car before September 13, 1936? A. Not when I had to pay the shylocks, I sold that car.

2378

Mr. Talley: I move to strike it out as not responsive.

Mr. Turkus: Consented to.

Mr. Talley: I ask your Honor to have the witness answer the question.

2379

By the Court:

Q. Do you remember about how long you had it? A. I really cannot tell you.

By Mr. Talley:

Q. In whose name was the registration? A. Al Glass.

Q. Who is Al Glass? A. He was my partner in shylocking.

2380

Sol Bernstein—For People—Cross

Q. Why didn't you have it in your name? A. Why didn't I have it in my name?

Q. You heard what I said. Answer the question without repeating. A. Because one of the mob who like to borrow my car took it for a couple of hours and kept it for weeks; that is the reason why.

Mr. Rosenthal: I object.

2381

Mr. Turkus: It is a fair question and invited the answer.

Mr. Rosenthal: I object to a speech by the District Attorney when I make an objection.

Mr. Turkus: When the District Attorney objects he calls it a speech. That is an objection.

The Court: The objection is dilatory. It can be viewed as a motion, and the Court denies the motion.

Mr. Rosenthal: I respectfully except.

2382

Q. So the registration was in the name of Al Glass, who was a partner of yours? A. Yes, sir.

Q. Was it at his request that the car was put in his name?

Mr. Rosenthal: I object.

The Court: Sustained as immaterial.

Q. Did you pay for the car with your money? A. I paid for it in cash.

Q. With your money? A. Yes, sir, about \$1,200.

Q. How much? A. About \$1,200.

Q. Where did you get the \$1,200 to buy this car? A. I won it in gambling.

Q. And stealing? A. No, sir.

Q. And murdering? A. Whenever I got orders from the mob.

Mr. Rosenthal: I ask the answer be stricken out.

The Court: Strike out the latter part.

Q. Then, you committed or participated in more murders than these two you have spoken of? A. That is not what I told you.

2384

Q. How many murders did you take part in or commit besides those two you say you know about?

Mr. Turkus: I object. That is not the testimony.

Mr. Talley: Never mind what the testimony is. I am cross examining.

Objection overruled.

A. None.

2385

Q. This trial that you testified to before the grand jury in the court-room in Monticello, that was a trial of a man named Gangy Cohen, wasn't it?

Mr. Turkus: I object. The question is not intelligible; "this trial" he "testified before the Grand Jury."

Mr. Talley: In answer to your question, he testified—

Mr. Turkus: I have an objection to that question as not intelligible.

2386

Sol Bernstein—For People—Cross

Mr. Talley: In answer to the District Attorney's question, this witness stated that he testified in Monticello before the Grand Jury and in the trial. I am pursuing that inquiry that was brought into this case by the District Attorney.

By the Court:

Q. Did you testify at the trial of Gangy Cohen?

2387

A. Yes, sir.

By Mr. Talley:

Q. Did you tell the truth there? A. All the truth, no, because I did not want to give the mob any information before; they were not picked up yet.

Mr. Rosenthal: I move to strike out all after "No."

The Court: Let it stand.

Mr. Rosenthal: Exception.

2388

Q. You took an oath to tell the truth when you took the witness chair? A. Yes, sir.

Q. Just the same oath as you took in this court-room on Friday last? A. Yes, sir.

Q. And after taking that oath to tell the truth you testified falsely in Sullivan County? A. Whatever Gangy told me, I said the truth, but I did not want to give no information to the mob because they were not picked up yet, and he was a lawyer.

Mr. Rosenthal: I move to strike it out.

Sol Bernstein—For People—Cross

2389

A. (continuing) But I told the Grand Jury the truth about this case.

The Court: The latter part is not responsive. Strike it out.

Q. You testified falsely, didn't you? A. About some matters in this trial in Monticello, because I did not want to give information.

Q. Did you or didn't you? A. Because I did not want to give information.

2390

Q. Did you or didn't you? A. I told the Grand Jury the truth about everything in this case long before I was a witness.

Q. Did you testify falsely when you appeared in court in the case in Monticello?

Mr. Rosenthal: I object.

The Court: Yes or no.

Mr. Rosenthal: I have a motion to make. My motion is to strike out the voluntary statement that this witness is repeating right now. It is not responsive to the question asked by Judge Tallely.

2391

The Court: Strike it out.

Mr. Rosenthal: In view of the fact of continued repetition by this witness, I ask your Honor to admonish the jury to disregard the statements which your Honor has stricken out.

The Court: The jury has already been instructed on that.

By the Court:

Q. Did you testify in the trial of Gangy Cohen

2392

Sol Bernstein—For People—Cross

to anything that was not true? A. Yes, sir, I knew I was doing wrong.

Q. Did you fail to testify to some things that were true? A. Yes, sir, I knew I was doing wrong.

The Court: At this time we will require only direct answers and no explanations. The District Attorney will examine at the conclusion of the cross.

2393

Mr. Rosenthal: I move to strike out everything after "Yes."

The Court: Strike it out.

By Mr. Talley:

Q. In this trial of Gangy Cohen, you testified on behalf of the District Attorney then? A. I don't understand what you mean, "behalf."

Q. You testified for The People? A. I am a stool pigeon, sir.

2394

Q. You were a stool pigeon? A. I am a stool pigeon, in other words, a rat. Does that satisfy you?

Q. Oh, no, I am not nearly satisfied with you yet. I am not nearly satisfied. When you say "rat", you mean one who squeals on his friends? A. What am I to do now?

Mr. Rosenthal: I move to strike that out.

Q. What did you say you are doing?

Mr. Rosenthal: I object to it.

The Court: The whole colloquy is wrong.

Q. What did you say you are doing? A. I am telling the truth about everything.

The Court: Let us proceed with question and answer; do not quarrel.

Mr. Turkus: Mr. Talley continues on the repetition of a fair question and answer of the witness, and then we have another counsel object to it.

Mr. Rosenthal: I am representing one of the defendants, and I have a right to object whenever I feel like it.

2396

The Court: What is your objection?

Mr. Rosenthal: My objection was to the question of Judge Talley, and now my motion is to strike out the answer. The objection was on the record before the answer was given.

The Court: Objection overruled. Motion denied.

Mr. Rosenthal: Exception.

Q. You testified against Gangy Cohen, didn't you? A. Yes, sir. You tell me for what.

2397

Q. What? A. You tell me that.

Q. You did testify against him? A. Yes, sir.

Q. You testified as to a statement that you said Gangy Cohen made to you, in Florida. A. What, sir? You are making a mistake.

Q. Where was it? A. In California, Los Angeles.

Q. You testified that Cohen had admitted killing the victim of the Monticello crime? A. Yes, sir, Walter Sage, he told me he had something to do with it.

Q. You testified that Gangy Cohen told you

2398

Sol Bernstein—For People—Cross

he had killed Walter Sage? A. With other people, yes, sir.

Q. And the jury acquitted Gangy after hearing your testimony, didn't they?

Mr. Turkus: I object.

2399

The Court: Very reluctantly, the Court is required to censure Mr. Talley for asking a question which he knows is incompetent, and the jury is instructed to utterly disregard it. The decision of this case has no relation to the decision in any trial of any other case, gentlemen. This case is being decided in this court-room, not in Sullivan County.

We will take a recess now.

Mr. Talley: Just before you do that, you have got to give me an opportunity to note my exception to your Honor's statement as well as to your Honor's ruling. Now I am ready to adjourn if your Honor sees fit.

2400

The Court: (addressing the jury) We will resume at 1:30 o'clock. That will give you an opportunity to go around and be seated together before the crowd comes in the restaurant.

Please do not discuss the case nor let anybody talk to you about it. Keep your minds open.

First the witness will leave.

(Witness leaves the witness stand.)

The Court: Now the jury may go out. The defendants are remanded.

(Whereupon a recess was taken until 1:30 P. M.)

(CONTINUED IN VOLUME II)